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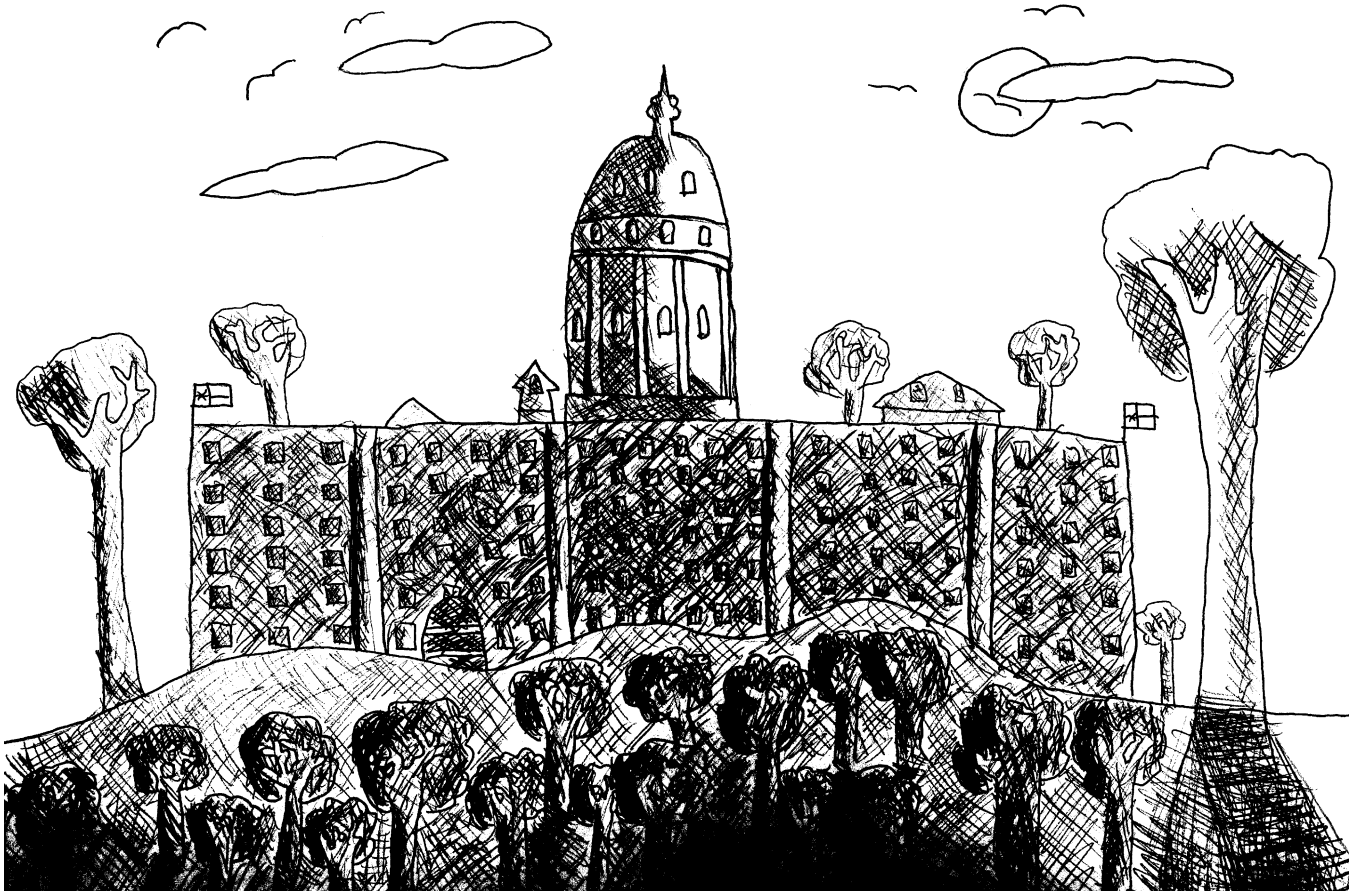

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

Texas Higher Education Coordinating Board

Texas Department of Housing and Community Affairs

Houston-Galveston Area Council

Texas Department of Insurance

Texas Department of Insurance, Division of Workers' Compensation

Texas Lottery Commission

North Central Texas Council of Governments

Texas Board of Professional Engineers

Public Utility Commission of Texas

Texas Department of Transportation

University of Houston System

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 463-5561 in Austin. For out-of-town callers our toll-free number is 800-226-7199. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/opinopen/opengovt.shtml

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.state.tx.us/

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at http://www.oag.state.tx.us. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Request for Opinions

RQ-0474-GA

Requestor:

Raymund A. Paredes, Ph.D.

Commissioner of Higher Education

Texas Higher Education Coordinating Board

Post Office Box 12788

Austin, Texas 78711

Re: Procedures for an election to approve the annexation of territory by a junior college district (Request No. 0474-GA)

Briefs requested by May 21, 2006

RQ-0475-GA

Requestor:

The Honorable Mike Stafford

Harris County Attorney

1019 Congress, 15th Floor

Houston, Texas 77002

Re: Whether the Texas Department of Family and Protective Services or an independent administrator may contract with a governmental entity to provide substitute care and case management services (Request No. 0475-GA)

Briefs requested by May 21, 2006

RQ-0476-GA

Requestor:

The Honorable William M. Jennings

Gregg County Criminal District Attorney

101 East Methvin Street, Suite 333

Longview, Texas 75601

Re: Whether section 22.01(k), Tax Code, exempts certain vehicles from taxation by waiving rendition requirements (Request No. 0476-GA)

Briefs requested by May 24, 2006

RQ-0477-GA

Requestor:

The Honorable Allan Ritter

Chair, Committee on Economic Development

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether the Open Meetings Act requires notice of a non-binding vote on a ceremonial "personal endorsement" motion (Request No. 0477-GA)

Briefs requested by May 24, 2006

RQ-0478-GA

Requestor:

The Honorable Eddie Lucio, Jr.

Chair, Committee on International Relations and Trade

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Eligibility of a person convicted of a crime in Mexico to serve as a member of the board of Texas Southmost College (Request No. 0478-GA)

Briefs requested by May 1st, 2006

RQ-0479-GA

Requestor:

The Honorable Carole Keeton Strayhorn

Texas Comptroller of Public Accounts

Post Office Box 13528

Austin, Texas 78711-3528

Re: Whether House Bill 3, proposed by the 3rd Called Session of the Texas Legislature, would, if enacted, contravene article VIII, section 24(a), Texas Constitution, without approval by a majority of voters in a statewide referendum (Request No. 0479-GA)

Briefs requested by May 10, 2006

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200602334

Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: April 26, 2006

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER B. GENERAL PROVISIONS

1 TAC §354.1450

The Texas Health and Human Services Commission (HHSC) proposes new §354.1450, relating to audits of Medicaid providers.

Background and Justification

Added by Senate Bill 630, 79th Legislature, Regular Session, 2005, the Human Resources Code (HRC) §32.070 requires HHSC to adopt rules governing the audit of Medicaid providers. New §354.1450 implements the provisions of the statute.

Section-by-Section Summary

Section 354.1450(a) defines "provider" as the term is used in the rule.

Section 354.1450(b) implements the HRC §32.070(d) exempting an audit using the Medicaid Fraud Detection Audit System, or an audit or investigation conducted by the Medicaid Fraud Control Unit of the Office of Attorney General, Office of the State Auditor, Office of Inspector General, or the United States Department of Health and Human Services Inspector General.

Section 354.1450(c) describes the audit requirements with which an agency must comply.

Section 354.1450(d) allows a provider to request an informal, early review of a final audit report or unfavorable finding by an HHSC ad hoc review panel. This review does not require legal counsel and the panel recommendations are advisory only.

Fiscal Note

Tom Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first 5-year period the proposed rule is in effect there will be no fiscal impact to state government. The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro businesses to comply with the proposal as they will not be required to alter their business practices as a result of the rule. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

Public Benefit

Tom Suehs, Deputy Executive Commissioner, Financial Services, has determined that for each year of the first five years the section is in effect, the public will benefit from the adoption of the section. The anticipated public benefit, as a result of enforcing the section, will be regulatory criteria audits of providers who contract with HHSC, affording providers the opportunity to explain discrepancies to the auditing agencies before having to obtain legal counsel to mediate any audit findings.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environment exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environment exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Sharon Thompson at P.O. Box 85200, Austin, Texas 78708-5200, by fax to (512) 833-6043, or by e-mail to sharon.thompson@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The new rule is proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021 and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; the Human Resources Code, §32.070, which provides the Commissioner of HHSC with the authority to adopt rules governing audit of Medicaid providers; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements).

The proposed new rule affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1450 Audits of Medicaid Providers.

(a) In this section, "provider" means an individual, firm, partnership, corporation, agency, association, institution, or other entity that is or was approved by HHSC to provide Medicaid under contract or provider agreement with HHSC.

(b) This section does not apply to a computerized audit conducted using the Medicaid Fraud Detection Audit System or an audit or investigation conducted by the Medicaid Fraud Control Unit of the Office of the Attorney General, the Office of the State Auditor, the Office of Inspector General, or the Office of Inspector General in the United States Department of Health and Human Services.

(c) Except as described in subsection (b) of this section, an agency auditing division or entity must:

(1) Notify the provider, and the provider's corporate headquarters, if the provider is a pharmacy that is incorporated, of the impending audit not later than the seventh day before the date the field audit portion of the audit begins;

(2) Limit the period covered by an audit to three years;

(3) Accommodate the provider's schedule to the greatest extent possible when scheduling the field audit portion of the audit;

(4) Conduct an entrance interview before beginning the field audit portion of the audit;

(5) Audit all providers of the same type under the same standards and parameters;

(6) Conduct the audit in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States or other appropriate standards;

(7) Conduct an exit interview at the close of the field audit portion of the audit with the provider to review the agency's initial findings;

(8) At the exit interview, allow the provider to:

(A) Respond to questions by the agency;

(B) Comment, if the provider desires, on the initial findings of the agency; and

(C) Submit additional supporting documentation, for consideration, that meets the auditing standards required by paragraph (6) of this subsection, to correct a questioned cost, if there is no indication that the error or omission that resulted in the questioned cost demonstrates intent to commit fraud;

(9) Provide to the provider a preliminary audit report and a copy of any document used to support a proposed adjustment to the provider's cost report;

(10) Permit the provider to produce, for consideration, documentation to address any exception found during an audit not later than the 10th day after the date the field audit portion of the audit is completed;

(11) Deliver a draft audit report to the provider not later than the 60th day after the date the field audit portion of the audit is completed;

(12) Permit the provider to submit, for consideration, a written management response to the draft audit report or to informally appeal the findings in the draft audit report not later than the 30th day after the date the draft audit report is delivered to the provider. The informal appeal will consist of a desk review by the auditing division or entity; and

(13) Deliver the final audit report to the provider not later than the 180th day after the date the field audit portion of the audit is completed or the date on which a final decision is issued on an appeal made under subsection (d) of this section, whichever is later.

(d) Upon receipt of the final audit report specified in subsection (c)(13) of this section, the provider may request an informal, early review of a final audit report or an unfavorable audit finding by an HHSC ad hoc review panel without the need to obtain legal counsel. All recommendations of the ad hoc review panel are advisory in nature and are not binding on HHSC.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 20, 2006.

TRD-200602252
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: June 4, 2006
For further information, please call: (512) 424-6576

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER O. NOTICE OF AVAILABILITY OF COVERAGE UNDER THE TEXAS HEALTH INSURANCE RISK POOL

28 TAC §§21.2302 - 21.2306

The Texas Department of Insurance proposes amendments to §§21.2302 - 21.2306, concerning notice of availability of coverage under the Texas Health Insurance Risk Pool (Health Pool). The Department proposes these amendments to implement SB 809, enacted by the 79th Legislature, Regular Session, effective January 1, 2006, which, in part, amends the Insurance Code §1506.152 to address eligibility for pool coverage. The primary purpose of SB 809 is to amend Chapter 1506 to make risk pool operations more cost-effective, efficient, and equitable.

The proposed amendments to §21.2302 make necessary conforming changes to the definitions of "covered individual," "health carrier," and "health coverage and substantially similar health coverage," by substituting the term "benefit plan issuer" for the term "carrier." These changes are needed as a result of the enactment of the nonsubstantive Insurance Code revision by the 78th Legislature, Regular Session, effective April 1, 2005 (78th Legislature code revision).

The proposed amendments to §21.2303 remove the requirement that a health benefit plan issuer provide written notice of Health Pool availability when the issuer offers substantially similar health coverage to or for an eligible individual who has applied

for health coverage from the issuer, but at rates higher than the issuer's standard rate. SB 809 deletes this condition as a qualifier for Health Pool eligibility. The proposed amendments also make necessary conforming changes to §21.2303 by substituting the term "benefit plan issuer" for the term "carrier," based on the 78th Legislature code revision.

The proposed amendments to §21.2304 change the Form Health Pool Notice referenced in §21.2305 from a formal Figure filed with the Secretary of State's Office and adopted by reference to a form to be provided by the Department and available on its website. The Department will provide this form for a health benefit plan issuer to use at its option when providing either the mandatory or permissive notice. The proposed amendment to §21.2304(b)(3) removes existing subparagraph (D) from the listing of reasons an individual may be eligible for coverage under the Health Pool, and redesignates remaining subparagraphs. Existing subparagraph (D) provides that an individual may be eligible for Health Pool coverage when the issuer offers substantially similar health coverage with rates that exceed the rates of the Health Pool. SB 809 deletes that qualifier from among those specified in the Insurance Code §1506.152(a)(3). The proposed amendments also make necessary conforming changes to §21.2304 by substituting the term "benefit plan issuer" for the term "carrier," based on the 78th Legislature code revision.

The proposed amendments to §21.2305 direct that the Form Health Pool Notice can be obtained from the Department and update the mailing address; the amendments also indicate that the notice is available at the Department's website. The proposed amendments also delete subsection (b) and its reference to Figure 1, since the amended notice will be neither filed with the Secretary of State's Office nor adopted by reference in the text of the rule.

The proposed amendments to §21.2306 specify the effective date pertaining to certain sections of this proposal. In accordance with SECTIONS 11 and 13 of SB 809, the proposed amendments to §21.2303(a) and §21.2304(b)(3) are effective for any application for health coverage received, processed, or acted upon by a health benefit plan issuer on or after January 1, 2006. The other proposed amendments will be effective pursuant to the Government Code §2001.036, which provides that a rule takes effect 20 days after the date on which it is filed in the Office of the Secretary of State.

Jennifer Ahrens, Associate Commissioner, Life, Health and Licensing Division, has determined that for each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal implications on state or local government, local employment, or local economies as a result of enforcing or administering this proposal.

Ms. Ahrens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of the proposed amendments will be more accurate consumer understanding of the availability of Health Pool coverage.

Ms. Ahrens has determined that the cost of compliance associated with the proposal results from legislative amendments to Insurance Code §1506.152. Accordingly, the proposed amendments will not have an impact on small and micro businesses. The Department has considered the purposes of the relevant statute, which is to require health benefit plan issuers to provide written notice of Health Pool availability to an eligible individual who has applied for health coverage from the health benefit plan issuer in certain statutorily specified instances, and has determined that it is neither legal nor feasible to waive or modify the requirements for small or micro businesses. To minimize notice provision costs, health benefit plan issuers may obtain the Health Pool Notice form template from the Texas Department of Insurance or the Department's web site.

Comments on the proposal must be submitted in writing by 5:00 p.m. on June 5, 2006, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be submitted to Bill Bingham, Deputy Commissioner for Regulatory Matters, Life, Health and Licensing Program, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk by 5:00 p.m. on May 29, 2006.

The amendments are proposed under the Insurance Code Chapter 1506 and §36.001. Section 1506.005 provides that the Commissioner may adopt rules as necessary and proper to implement the chapter. Section 1506.007(b) states that an insurer providing notice pursuant to the section shall provide such notice as prescribed by the Commissioner. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statute is affected by this proposal: Insurance Code Chapter 1506

§21.2302. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Covered individual--An individual who is a resident of Texas and currently covered by health coverage issued by a health benefit plan issuer [~~carrier~~].

(2) (No change.)

(3) Health benefit plan issuer [~~carrier~~]--Any entity authorized under the Texas Insurance Code or another insurance law of this state, which provides health coverage in this state, including an insurance company, a group hospital service corporation under Chapter 20, a health maintenance organization under the Texas Health Maintenance Organization Act (Chapter 20A), an approved nonprofit health corporation, a fraternal benefit society under Chapter 10, and a stipulated premium company under Chapter 22.

(4) Health coverage and substantially similar health coverage--Individual health coverage issued by a health benefit plan issuer [~~carrier~~] that provides coverage for hospital, medical, or surgical expenses. The term does not include accident, dental-only, vision-only, fixed indemnity, credit insurance or other limited coverage including specified disease, long-term care or disability income coverage, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical-payment insurance, Medicare supplement or Medicare Select coverage, or coverage by Medicare, or insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(5) (No change.)

§21.2303. Delivery of Notice.

(a) A health benefit plan issuer [carrier] shall provide written notice of Health Pool availability to an eligible individual who has applied for health coverage from the health benefit plan issuer [carrier], if the health benefit plan issuer [carrier]:

(1) refuses to issue substantially similar health coverage to or for the eligible individual; or

(2) offers substantially similar health coverage to or for the eligible individual with riders excluding an individual or a medical condition or illness of an individual from coverage by that policy. [; or]

[(3) offers substantially similar health coverage to or for the eligible individual at rates higher than the health carrier's standard rate.]

(b) The notice shall be sent with the written notification of the action taken or proposed to be taken by the health benefit plan issuer [carrier] on the eligible individual's application for coverage from the health benefit plan issuer [carrier].

(c) A health benefit plan issuer [carrier] may also provide written notice of Health Pool availability to a covered individual for the purpose of allowing the covered individual to compare his or her current health coverage issued by the health benefit plan issuer [carrier] with the coverage offered by the Health Pool.

§21.2304. Notice.

(a) The health benefit plan issuer [carrier] may use the Form Health Pool Notice referenced [provided at Figure 1] in §21.2305 of this title (relating to Form) when issuing the notice required by §21.2303(a) of this title (relating to Delivery of Notice).

(b) In lieu of the notice outlined in subsection (a) of this section, a health benefit plan issuer [carrier] may opt to provide a notice that contains substantially similar language to the language contained in the Form Health Pool Notice referenced [Figure 1] in §21.2305 of this title (relating to Form). The substantially similar language shall be in a readable and understandable format and shall include a clear, complete, and accurate description of the items set out in paragraphs (1) - (5) of this subsection in the following order:

(1) - (2) (No change.)

(3) a listing of the reasons an individual may be eligible for coverage under the Health Pool which are:

(A) one written refusal or rejection for substantially similar health coverage from a health benefit plan issuer [carrier] due to a medical condition;

(B) a certification from an agent or salaried representative of a health benefit plan issuer [carrier], on a form developed by the Texas Health Pool Board of Directors (Board) and approved by the commissioner, that states the agent or salaried representative is unable to obtain substantially similar health coverage for the individual with a health benefit plan issuer [carrier] represented by the agent or salaried representative because, based on the health benefit plan issuer's [carrier's] underwriting guidelines, the individual will be declined for coverage as a result of a medical condition;

(C) the offer of substantially similar health coverage with a rider that excludes certain health conditions of the individual and an example of such rider similar to the following: For example, a health benefit plan issuer [carrier] will provide coverage to the individual with an exclusion of the individual's diabetes, heart disease, cancer, etc.;

[(D) the offer of substantially similar health coverage with rates that exceed the rates of the Health Pool;]

(D) [(E)] the individual has been diagnosed with one of the medical conditions specified by the Board that qualifies him/her for Health Pool coverage; or

(E) [(F)] evidence that the individual has maintained health coverage for the previous 18 months with no gap in coverage greater than 63 days, with the most recent health coverage through an employer-sponsored plan, government plan, or church plan.

(4) - (5) (No change.)

(c) If a health benefit plan issuer [carrier] provides a notice of Health Pool availability to its covered individuals pursuant to §21.2303(c) of this title, the health benefit plan issuer [carrier] may use the Form Health Pool Notice referenced [provided at Figure 1] in §21.2305 of this title, or a substantially similar notice as outlined in subsection (b) of this section, provided the health benefit plan issuer [carrier] includes the provisions of paragraphs (1) and (2) of this subsection in either the Form Health Pool Notice [Figure 1] or the substantially similar notice:

(1) - (2) (No change.)

(d) (No change.)

§21.2305. Form.

[(a)] The Form Health Pool Notice [is included in subsection (b) of this section in its entirety and has been filed with the Office of the Secretary of State. The address and phone numbers are variable to encompass any future changes. The form] can be obtained from the Texas Department of Insurance, Life/Health & HMO Intake Section, Life/Health Division, MC 106-1E [MC 106-1A], P.O. Box 149104, Austin, Texas 78714-9104, or at the department's website, www.tdi.state.tx.us.

[(b) Form Health Pool Notice, Figure 1:]
[Figure: 28 TAC §21.2305(b)]

§21.2306. Compliance and Effective Date [Dates].
The amendments to [§21.2302(4) of this title (relating to Definitions),] §21.2303(a) of this title (relating to Delivery of Notice), and §21.2304[(a) and] (b)(3)(D) of this title (relating to Notice)[, and §21.2305(b) of this title (relating to Form)] apply to any application for health coverage received, processed, or acted upon by a health benefit plan issuer [carrier] on or after January 1, 2006 [September 1, 1999, and the provisions of §21.2302(5) of this title, §21.2303(c) of this title, and §21.2304(c) of this title apply to any notice by a health carrier on or after January 1, 2000].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 18, 2006.

TRD-200602216
Gene Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: June 4, 2006
For further information, please call: (512) 463-6327

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS
SUBCHAPTER K. SMALL COMMUNITY HARDSHIP PROGRAM

31 TAC §363.1106

The Texas Water Development Board (board) proposes an amendment to 31 TAC §363.1106, concerning Financial Assistance Programs, Subchapter K, relating to the Small Community Hardship Program, to create a waiver from an existing program requirement.

The board proposes to amend §363.1106(b). Currently, this subsection requires that all applicants receiving grant funds under this program incur debt from another program administered by the board. The board proposes to amend §363.1106(b) to allow the board to waive this requirement any time before the loan is closed if the applicant is connecting to an existing service provider which assists the applicant in complying with state regulation, the existing service provider has made financial contributions to connect the applicant's utility system to the service provider; and the existing service provider agrees to assume full ownership of the applicant's utility system upon completion of the project. Even if these conditions are met, the proposed rule amendment will allow, but does not require, the board to waive the loan requirement. The decision to exercise the waiver is left to the sole discretion of the board in order to implement to an important statewide objective. The waiver as proposed may be able to encourage regionalization of water and wastewater utility providers, a statewide policy objective, in order to maximize efficiency in this industry. Additionally, the board has determined that to require a loan in this circumstance may serve as a disincentive to regionalization by creating a liability that an existing system will not want to assume. If the request for the waiver meets the conditions set forth in the rule and the board in its sole discretion determines that the waiver meets the objectives and best serves the interest of the state, the board may grant the waiver.

Melanie Callahan, Acting Chief Financial Officer, has determined that, for the first five-year period the amendment is in effect, there will not be fiscal implications on state and local government as a result of enforcing and administering the amended section.

Ms. Callahan has also determined that for the first five years the amendment, as proposed, is in effect, the public benefit anticipated as a result of enforcing the proposed amendment will be to encourage utility providers that have the operational capability to provide water or wastewater service on a regional basis to assist projects that improve service to underserved areas. Ms. Callahan has determined there will not be economic costs to small businesses or individuals required to comply with the amendment as proposed.

Comments on the proposal will be accepted for 30 days following publication and may be submitted to Jonathan Steinberg, Deputy Counsel, General Counsel's Office, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231, by e-mail to jonathan.steinberg@twdb.state.tx.us or by fax at (512) 463-5580.

Statutory authority: Water Code, §§6.101, 15.001(11), 15.011, and 15.103.

Cross reference to statute: Water Code, Chapter 15, Subchapter C.

§363.1106. Grant Assistance.

(a) (No change.)

(b) The remaining portion of the amount of the financial assistance requested in the application not provided as a grant shall be provided by a loan from another board program. The board may, in its sole discretion, waive the requirement of this subsection if, prior to closing, the following conditions are met:

(1) The applicant is connecting to an existing service provider which, by connecting to the existing system, will assist the applicant in achieving compliance with state utility system regulations;

(2) The existing service provider has contributed resources, in kind or direct financial assistance, to connect the applicant's utility system to the service provider; and

(3) The existing service provider executes a written agreement pursuant to which the service provider agrees to assume full ownership, operation, and management of the applicant's entire utility system upon completion of the project.

(c) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 20, 2006.

TRD-200602253
Wendall Corrigan Braniff
General Counsel
Texas Water Development Board
Proposed date of adoption: June 13, 2006
For further information, please call: (512) 475-2052

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 18. TEXAS CHILD CARE DEVELOPMENT BOARD

CHAPTER 631. STANDARDS FOR STATE AGENCY EMPLOYEE CHILD CARE FACILITIES

40 TAC §631.1, §631.2

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Building and Procurement Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Building and Procurement Commission (TBPC) proposes the repeal of Title 40, Texas Administrative Code, Chapter 631, §631.1 and §631.2 (relating to Standard for State Agency Employee Child Care Facilities). These rules originally were adopted by the Child Care Development Board in 1992. The Legislature abolished the Child Care Development Board in 2001 and assigned its duties and existing rules to the TBPC in Texas Government Code, Chapter 663. The Texas Child Care Development Board no longer exists.

Ms. Ingrid K. Hansen, General Counsel, has determined for the first five-year period the repeal is in effect there will be no fiscal implications for state or local governments.

Ms. Hansen has further determined that for each year of the first five-year the repeal is in effect, the public benefit anticipated as a result of the repeal will be more efficient and well-organized rules.

There will not be any effect on large, small or micro-businesses that routinely participate in state business opportunities because of the repeal of these rules. There will be no anticipated economic costs to persons who are required to comply with the rules and there is no impact on local employment.

Comments on the proposals may be submitted to Rules Coordinator, Legal Services Division, Texas Building and Procurement Commission, P.O. Box 13047, Austin, TX 78711-3047. Comments may also be sent via email to: rulescomments@tbpc.state.tx.us. Comments must be received no later than thirty days from the date of publication of the proposal to the *Texas Register*. Questions concerning this proposed repeal can be directed to Ms. Connie K. Sanders at (512) 463-7829.

The repeal of the existing rules is proposed under Texas Government Code §663.101(b) and Act of September 1, 2001, 71st Leg., R.S., ch. 761, 2001 Tex. Gen. Laws 1494, 1499, which authorizes the Texas Building and Procurement Commission to take appropriate action with respect to the rules of the Child Care Development Board.

The following code section is affected by these rules: Texas Government Code §663.101.

§631.1. Purpose.

§631.2. Standards and Procedures.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 24, 2006.

TRD-200602269
Ingrid K. Hansen
General Counsel, Texas Building and Procurement Commission
Texas Child Care Development Board
Earliest possible date of adoption: June 4, 2006
For further information, please call: (512) 463-7829

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PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER C. ELIGIBILITY FOR CHILD PROTECTIVE SERVICES

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), the repeal of §700.316 and new §700.316, concerning eligibility requirements for Title IV-E, MAO, and state-paid foster-care assistance, and an amendment to §700.324, concerning re-determination of foster care eligibility in its Child Protective Services chapter. The purpose of the proposal is to update the rule based on legislation passed in the 79th Legislature, Regular Session, 2005, and to conform to current federal regulations. There are four primary changes. House Bill (H.B.) 614 amended §264.101(a) of the Texas Family Code (TFC) to require that DFPS continue to pay for foster care for a youth who is enrolled in high school or a secondary school program. Under this statute, eligibility for extended foster care extends until the youth graduates, leaves school, or turns 22 years old. The current rule only paid foster care for those youth expected to complete high school by age 20. H.B. 614 was effective May 10, 2005, and DFPS has implemented the change through policy. The second change provides for an extension of foster care up to the age of 21 for youth enrolled in vocational or technical training. This is consistent with Senate Bill (S.B.) 6, which directs DFPS to address the unique challenges that foster children face when transitioning to independent living, and is authorized under TFC, §264.101(d). The current rule only provides for foster care funding up to age 19 years for qualified youth. The third change deletes the requirement that placements be nonprofit, which conforms with current federal regulations that no longer restrict payments to nonprofit entities. The fourth change addresses eligibility for foster care for those incapacitated youth for whom the Texas Department of Aging and Disability Services becomes guardian. S.B. 6 moved the Adult Protective Services guardianship program for incapacitated children aging out of CPS conservatorship to the Texas Department of Aging and Disability Services.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be fiscal implications for state government as a result of enforcing or administering the sections. The effect on state government for the first five-year period the amendments will be in effect is an estimated additional cost of $778,513 for fiscal year (FY) 2007 as a result of an increase of 37 children in paid foster care; $1,117,331 for FY 2008 as a result of an increase of 53 children in paid foster care; $1,496,648 for FY 2009 as a result of an increase of 71 children in paid foster care; $1,950,825 for FY 2010 as a result of an increase of 92 children in paid foster care; and $2,209,195 for FY 2011 as a result of an increase of 104 children in paid foster care. Ms. Brown has determined that the fiscal impact of implementing the policy for H.B. 614 prior to adoption of these rules will have a minor impact in FY 2006; it is anticipated that approximately 21 additional children will be served in extended foster care at an additional cost of $453,489. The increased workloads resulting from this change will be absorbed by existing DFPS substitute care staff and eligibility staff. There will be no fiscal implications for local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that youth reaching adult age while in the foster care system will have additional living options and a smoother transition into adulthood and independent living. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Candice Holmes at (512) 438-3250 in DFPS's Child Protective Services Division. Electronic comments may be submitted to

Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-343, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

HHSC has determined that the proposed sections do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

40 TAC §700.316

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements Texas Family Code (TFC) §264.101(a-1) and §264.101(d).

§700.316. Eligibility Requirements for Title IV-E, MAO, and State-Paid Foster-Care Assistance.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 20, 2006.

TRD-200602255
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 4, 2006
For further information, please call: (512) 438-3437

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40 TAC §700.316, §700.324

The amendment and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment and new section implement Texas Family Code (TFC) §264.101(a-1) and §264.101(d).

§700.316. Eligibility Requirements for Title IV-E, MAO, and State-Paid Foster-Care Assistance.

(a) The child or youth must meet all of the following criteria to be eligible for Title IV-E, Medical Assistance Only (MAO), or state-paid foster care assistance.

(1) Responsibility for placement and care. The Texas Department of Family and Protective Services (DFPS) must have the responsibility for the child's placement and care. This requirement is met if:

(A) The child is placed in DFPS's managing conservatorship by written court order issued under Title 5, Texas Family Code;

(B) DFPS takes possession of a child under Texas Family Code §262.204;

(C) The child lives with his minor parent, and the minor parent is in DFPS's managing conservatorship. The child and the minor parent must reside together in the same foster family home or residential child-care operation; or

(D) The youth is in conservatorship immediately preceding his 18th birthday, and:

(i) has capacity and has signed a voluntary Extended Foster Care Agreement; or

(ii) lacks capacity and the Texas Department of Aging and Disability Services (DADS) has applied for and is granted guardianship.

(2) Age, educational, and vocational requirements.

(A) The child must be less than 18 years old; or

(B) If a youth in foster care turns 18 years old, and is receiving foster care assistance, the youth's eligibility for foster care assistance ends on the last day of the month of his 18th birthday, unless one of the following conditions is satisfied:

(i) The youth is enrolled in and attending full time a high school or a program leading toward a high school diploma. In this case the youth's eligibility is extended until the end of the month the youth completes or withdraws from high school, or the end of the month in which the youth turns 22 years old, whichever comes first;

(ii) The youth has been accepted for admission to a college or vocational program that does not begin immediately. In this case the youth's eligibility is extended for a period not to exceed three and one-half months following the end of the month in which the youth graduates from high school or obtains a General Equivalence Diploma ("GED");

(iii) The youth is enrolled in and attending GED classes full time and is expected to complete the classes by his 19th birthday. In this case the youth's eligibility is extended until the end of the month the youth completes or withdraws from the classes, or the end of the month in which the youth turns 19 years old, whichever comes first;

(iv) The youth is enrolled in and attending full time a vocational or technical training program and is expected to complete the program before his 21st birthday. In this case the youth's eligibility is extended until the end of the month the youth completes or withdraws from the program, or the end of the month in which the youth turns 21 years old, whichever comes first; or

(v) The youth receives a GED, enrolls in a vocational or technical training program before his 18th birthday, and is expected to complete the program before or during the month of his 19th birthday. In this case the youth's eligibility for Title IV-E foster care eligibility is extended until the end of the month in which he com-

pletes or withdraws from the program, or the end of the month in which the youth turns 19 years old, whichever comes first.

(3) Placement. The child must be receiving care in Texas in a licensed or verified foster home or a licensed or certified residential child-care operation approved for DFPS foster-care assistance, except in the following circumstances:

(A) The child is in permanent foster family care and the foster family moves out of state. The foster family must secure foster care licensing in the new state of residence within 90 days, or the child's eligibility for foster care assistance will be terminated until appropriate licensing is secured. The DFPS program director may grant one extension of no more than 60 days, but only if it is clear that the foster family will be licensed in the additional time;

(B) The child is removed from an out-of-state adoptive or foster care placement; and DFPS determines that another out-of-state placement will better meet the child's needs than a return to Texas; or

(C) Under the service plan, the child is to be reunited with his biological family and must move out-of-state in order to live near the family.

(4) Resources. The child must not have equity in real or personal property in excess of:

(A) $10,000 if the child does not receive Supplemental Security Income (SSI); or

(B) $2,000 if the child receives SSI.

(5) Income. The child's monthly income must be less than the daily rate paid to the residential child-care operation for the child's maintenance. Countable income includes SSI; Retirement, Survivors, and Disability Insurance (RSDI); Veterans Administration (VA) benefits; any other dependent or survivor's income; funds resulting from the child's Indian heritage; or other income from private sources. The following types of income are not counted in determining eligibility:

(A) Earnings of a child who is a:

(i) full-time student; or

(ii) part-time student working less than 30 hours per week;

(B) Money given as a gift on an irregular basis by the parent to the child;

(C) Educational scholarships, loans, or grants provided to the child for purposes other than regular maintenance; and

(D) Child support payments received by or forwarded to the Office of the Attorney General.

(6) Lump-sum Income. Non-recurring lump-sum payments must be handled in accordance with all applicable state and federal laws and regulations. Lump sums placed in a trust inaccessible to the child do not affect a child's foster care eligibility.

(7) Social Security number. If eligible, the child must have, or must have applied for, a Social Security number.

(b) The following conditions determine the type of foster care assistance for which a youth qualifies if remaining in foster care past age 18 years:

(1) If the youth is enrolled in and attending full time a high school, GED classes, or a vocational or technical training program, and is scheduled to graduate or obtain a GED before or during the month of his 19th birthday, and the youth is not a ward of DADS, the youth's extension of foster care can remain Title IV-E until he completes or withdraws from high school, the GED classes, or the vocational or technical program, or the end of the month of the youth's 19th birthday, whichever comes first;

(2) If the youth is enrolled in and attending full time a high school or a program leading toward a high school diploma, but is not scheduled to graduate by his 19th birthday, the youth's foster care can be extended as state-paid until the end of month the youth completes or withdraws from high school, or the end of the month in which the youth turns 22 years old, whichever comes first;

(3) If the youth is enrolled in and attending full time a vocational or technical training program and is not expected to complete the program by his 19th birthday, the youth's foster care may be extended as state-paid and may continue until the end of the month the youth completes or withdraws from the program, or the end of the month the youth turns 21 years old, whichever comes first; or

(4) If the youth is eligible for the extension of foster care assistance as specified in subsection (a)(2)(B)(ii) of this section, the extension of foster care is state-paid at the Basic Service Level or the facility's lowest contracted rate.

§700.324. Re-determination [~~Redetermination~~] of Foster Care Eligibility.

[~~(a)~~] The Texas Department of Family and Protective [~~and Regulatory~~] Services (DFPS) [~~(PRS)~~] must re-determine [~~redetermine~~] a child's eligibility for aid to families with dependent children (AFDC), medical assistance only (MAO), and state-paid foster care assistance:

(1) at least every 12 months; [~~and~~]

(2) whenever changes in the child's circumstances affect his eligibility; and [~~.~~]

(3) if a move affects the child's eligibility, or the rate of foster care payment.

[~~(b) When a child moves to another facility, TDPRS must redetermine the child's eligibility if:~~]

[~~(1) the move affects the child's eligibility or the rate of foster care payment; or~~]

[~~(2) the child is leaving a for-profit facility into which he was placed at the Intense Service Level under the requirements specified in §700.316(4)(D) of this title (relating to Eligibility Requirements for AFDC, MAO, and State-paid Foster Care Assistance).~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 20, 2006.

TRD-200602256
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 4, 2006
For further information, please call: (512) 438-3437

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SUBCHAPTER Y. CONTRACTING WITH LICENSED RESIDENTIAL CHILD-CARE PROVIDERS

40 TAC §700.2501

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §700.2501, concerning general requirements for contracting with licensed residential child-care providers, in its Child Protective Services chapter. The purpose of the amendment is to update the rule to comply with the Fair Access to Foster Care Act, Public Law 109-113, which allows foster care maintenance payments to be paid on behalf of eligible children to either a nonprofit or for-profit child-placing agency, and to clarify recent changes made to the residential child-care licensing rules.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Brown also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the rules will be consistent with the federal laws, which will allow for a larger pool of residential providers. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the proposal may be directed to Jeannie Coale at (512) 438-4072 in DFPS's Purchased Client Services Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-345, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

HHSC has determined that the proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043, Government Code.

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Public Law 119-113, the Fair Access Foster Care Act of 2005, as it amends §472(b) of the Social Security Act.

§700.2501. General Requirements for Contracting with Licensed Residential Child-Care Providers.

(a) Program description. The Texas Department of Family and Protective [and Regulatory] Services (DFPS) [(TDPRS)] contracts with licensed residential child-care providers to provide substitute care to children in DFPS's [TDPRS's] managing conservatorship.

(b) Licensing and service [Organizational and licensing] requirements. To enter into a contract with DFPS [TDPRS] to provide substitute care to children in DFPS's [TDPRS's] managing conservatorship, a licensed residential child-care provider must meet the following [organizational and] licensing and service requirements:

[(1) Requirement for nonprofit status. The provider must be a governmental or legally incorporated nonprofit entity unless the entity is licensed as and contracting for services as a residential treatment center or is licensed as described in paragraph (2)(B) of this subsection, in which case the entity may be a for-profit entity.]

(1) [(2)] [Licensing.] The provider must have a current, valid license to provide 24-hour residential child care in Texas; [.]

(2) The provider must:

(A) offer services consistent with one of the types of licensed caregivers specified in §700.1321(a)-(d) of this title (relating to Types of Licensed Caregivers); or

(B) be a child-placing agency with the authority to verify foster caregivers as specified in Chapter 42, Human Resources Code; and

(3) The license must be issued by:

(A) DFPS's [TDPRS's Office of] Child-Care Licensing Division (CCL); or

(B) one of the state agencies specified in §700.1321(e) of this title (relating to Types of Licensed Caregivers).

[(3) Types of CCL-licensed caregivers. If the provider is licensed by CCL, the provider must:]

[(A) be:]

[(i) a foster family-home;]

[(ii) a foster group-home;]

[(iii) a residential group-care facility; or]

[(iv) an emergency shelter, as specified in §700.1321(a)-(d) of this title (relating to Types of Licensed Caregivers); or]

[(B) be a child-placing agency with the authority to verify foster caregivers as specified in Chapter 42, Human Resources Code.]

[(4) For-profit caregivers licensed by other agencies. A for-profit caregiver licensed by another agency may not be a child-placing agency, and may receive contracts to serve only children needing Moderate, Specialized, and Intense Service Levels.]

(c) General service requirements. In addition to meeting applicable licensing requirements, the provider must ensure that its organizational structure, its staff, and the services it provides to children in DFPS's [TDPRS's] managing conservatorship satisfy all applicable requirements set forth in:

(1) - (2) (No change.)

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 20, 2006.

TRD-200602257

Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 4, 2006
For further information, please call: (512) 438-3437

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CHAPTER 705. ADULT PROTECTIVE SERVICES
SUBCHAPTER L. RISK ASSESSMENT

40 TAC §705.6101

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Family and Protective Services (DFPS), new §705.6101, concerning risk assessment for in-home cases, in its Adult Protective Services chapter. The purpose of the new section is to outline the risk assessment criteria staff will use when assessing risk during an investigation of alleged abuse, neglect, and exploitation. The new section is the result of Senate Bill 6, 79th Legislature, Regular Session, 2005, which amended Human Resources Code, §48.004. This section states that the Executive Commissioner of HHSC, by rule, shall develop and maintain risk assessment criteria for use by department personnel in determining whether an elderly or disabled person is in imminent risk of abuse, neglect, or exploitation; is in a state of abuse, neglect, or exploitation; or needs protective services.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five- year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Brown also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a more thorough and complete assessment of the client's functioning and environment. Enhanced assessments provide better outcomes for clients that are victims of abuse, neglect, or exploitation. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of the proposal may be directed to Dana Williamson at (512) 438-3182 in DFPS's Adult Protective Services Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-342, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

HHSC has determined that the proposed section does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043, Government Code.

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §48.004, as amended by §2.06 of Senate Bill 6, 79th Legislature, Regular Session.

§705.6101. Risk Assessment for In-Home Cases.

(a) An assessment shall be completed during an in-home investigation of abuse, neglect, or exploitation to assist in determining whether the client is at imminent risk of abuse, neglect, or exploitation; is in a state of abuse, neglect, or exploitation; or needs protective services. The assessment includes the following criteria:

(1) Living conditions;

(2) Financial status;

(3) Physical/medical status;

(4) Mental status;

(5) Social interaction/support; and

(6) Need for legal intervention.

(b) A caseworker must consult with a supervisor when:

(1) Abuse, neglect, or exploitation is validated;

(2) The client faces a threat to life or a serious, imminent threat to physical safety; and

(3) The client has refused protective services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 19, 2006.

TRD-200602250
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 4, 2006
For further information, please call: (512) 438-3437

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CHAPTER 732. CONTRACTED SERVICES
SUBCHAPTER L. CONTRACT ADMINISTRATION

40 TAC §732.203

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §732.203, concerning how long may a contract period last and when may the contract be renewed, in its Contracted Services chapter. The purpose of the amendment is to allow a longer timeframe for initial contract periods and renewals for outsourcing the delivery of substitute care and case management services, and the evaluation of these services. Senate Bill 6, 79th Legislature, Regular Session, 2005, added Chapter 45, Privatization of Substitute Care and Case Management Services to the Human Resources Code.

Chapter 45 requires DFPS to outsource substitute care and case management services. The outsourcing must be completed by September 1, 2011.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Brown also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that there will be a new structural model for child welfare services resulting in community-centered delivery of substitute care and case management services that improves child protective services, achieves timely permanency, and improves the overall well-being of children. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the proposal may be directed to Jeannie Coale at (512) 438-4072 in DFPS's Purchased Client Services Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-345, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

HHSC has determined that the proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043, Government Code.

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Human Resources Code §45.004(a).

§732.203. How long may a contract period last and when may the contract be renewed?

(a) - (c) (No change.)

(d) For outsourcing the delivery of substitute care, case management services, and the evaluation of the provision of these services, the Department may competitively procure contracts containing:

(1) an initial contract period not to exceed 60 months; and

(2) two renewal options with each option not exceeding 24 months.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 20, 2006.

TRD-200602258
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 4, 2006
For further information, please call: (512) 438-3437

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 5. TEXAS BUILDING AND PROCUREMENT COMMISSION

CHAPTER 113. PROCUREMENT DIVISION SUBCHAPTER H. STATE AGENCY PROCUREMENTS OF RECYCLED, REMANUFACTURED OR ENVIRONMENTALLY SENSITIVE COMMODITIES OR SERVICES

1 TAC §113.135

The Texas Building and Procurement Commission (TBPC) adopts new Subchapter H, §113.135 (relating to State Agency Procurements of Recycled, Remanufactured or Environmentally Sensitive Commodities or Services). This new rule is adopted with changes to the proposed text as published in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1541).

The new §113.135 reorganizes existing §113.136 and §113.137 into one section. Section 113.135 also incorporates legislative changes pursuant to House Bill 2466, 79th Legislature. Sections 113.136 and 113.137 are being proposed for repeal simultaneously and published elsewhere in this edition of the *Texas Register*.

No comments were received on these rules.

Minor, non-substantive and grammatical amendments have been made for clarification purposes. Subsection (b)(3) has been amended by adding the words "recycled content." Subsection (d) has been amended to follow the language of the statute. The TXMAS acronym has been defined in subsection (e).

The new rule is adopted under the authority of the Tex. Gov't Code Ann. §2155.445 and §2155.448 authorizing the Texas Building and Procurement Commission to adopt rules relating to the recycling market development implementation.

§113.135. State Agency Procurements of Recycled, Remanufactured or Environmentally Sensitive Commodities or Services.

(a) The Texas Building and Procurement Commission (TBPC) may designate as "First Choice" certain recycled, remanufactured or environmentally sensitive commodities or services.

(b) First Choice items are designated recycled, remanufactured, and environmentally sensitive commodities or services that state agencies shall give a preference for when purchasing. These items include, but are not limited to:

(1) re-refined oils and lubricants;

(2) recycled content toilet paper;

(3) recycled content toilet seat covers and paper towels;

(4) recycled content printing, computer and copier paper, and business envelopes;

(5) recycled content plastic trash bags;

(6) recycled content plastic covered binders;

(7) recycled content recycling containers; and

(8) Energy Star labeled photocopiers.

(c) Commodities or services that are designated as First Choice items will be reflected in the State Procurement Manual. The State Procurement Manual will be revised as new commodities or services are designated as First Choice items.

(d) A state agency that intends to purchase a commodity or service that accomplishes the same purpose as a commodity or service identified in Texas Government Code 2155.448(a) that does not meet the definition of a recycled product or that is not remanufactured or environmentally sensitive shall include with the procurement file a written justification signed by the executive head of the agency stating the reasons for the determination that the commodity or service identified by the TBPC will not meet the requirements of the agency.

(e) Reports. In accordance with Texas Government Code §2155.448(c), not later than January 1 of each year, each state agency, excluding institutions of higher education, must deliver a report of total expenditures for purchases of goods and services that have recycled material content that are remanufactured or environmentally sensitive. These reports shall be made to the TBPC at https://portal.tbpc.state.tx.us/. Texas multiple-award schedule (TXMAS) recycled, remanufactured or environmentally sensitive contract purchases may be added to this report.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 24, 2006.

TRD-200602268
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Effective date: May 14, 2006
Proposal publication date: March 10, 2006
For further information, please call: (512) 463-7829

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SUBCHAPTER H. RECYCLING MARKET DEVELOPMENT BOARD (RMDB)

1 TAC §113.136, §113.137

The Texas Building and Procurement Commission (TBPC) adopts the repeal of Subchapter H, §113.136 and §113.137 (relating to Recycling Market Development Board). The repeal is adopted without changes to the proposal as published in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1541).

This repeal is adopted because a new Subchapter H, §113.135 was simultaneously proposed in the March 10, 2006, issue of the *Texas Register* and is being adopted elsewhere in this issue. New §113.135 reorganizes existing §113.136 and §113.137 into one section and incorporates legislative changes pursuant to House Bill 2466, 79th Legislature.

These rules are being repealed simultaneously when the new rule goes into effect.

No comments were received regarding the proposed repeals.

The repeals are adopted under Tex. Gov't Code Ann. §2152.003 and §2155.448, which authorizes the Texas Building and Procurement Commission to adopt identifying recycled, remanufactured or environmentally sensitive commodities or services and designating purchasing goals for such commodities and services.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Ingrid K. Hansen
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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER I. TRANSMISSION AND DISTRIBUTION

DIVISION 2. TRANSMISSION AND DISTRIBUTION APPLICABLE TO ALL ELECTRIC UTILITIES

16 TAC §25.214

(Editor's Note: In accordance with Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," Figure: 16 TAC §25.214(d)(1) is not included in the print version of the Texas Register. The Figure is available in the on-line edition of the May 5, 2006, issue of the Texas Register.)

The Public Utility Commission of Texas (commission) adopts an amendment to §25.214, relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities with changes to the proposed text as published in the November 18, 2005, issue of the *Texas Register* (30 TexReg 7647).

The amendment will clarify terms and conditions of retail delivery service and establish standard services to be provided by all investor owned utilities. This amendment is adopted under Project Number 29637.

The commission received comments on the proposed amendment from the Colorado River Municipal Water District (CRMWD); the Electric Reliability Council of Texas (ERCOT); Joint Transmission and Distribution Utilities (TDUs), comprised of: AEP Texas Central Company and AEP Texas North Company, CenterPoint Energy Houston Electric, LLC, TXU Electric Delivery Company (TXU ED), and Texas New Mexico Power Company; the Office of the Public Utility Counsel (OPC); Tenaska Power Services d/b/a TPS III; Texas Industrial Energy Consumers (TIEC); Texas Ratepayers Organization to Save Energy, and Texas Legal Services Center (Consumers). The commission also received comments from the REP Coalition, comprised of: CPL Retail Energy; Direct Energy; Entergy Solutions Ltd.; Gexa Energy; Green Mountain Energy Company; Reliant Energy, Inc.; Stream Energy; TXU Energy Retail Company LP; WTU Retail Energy; the Alliance for Retail Markets, comprised of APS Energy Services, Constellation New Energy, Inc, Direct Energy, Entergy Solutions, Ltd., Green Mountain Energy Company, Strategic Energy and Stream Energy; the Texas Energy Association for Marketers, comprised of Accent Energy, Cirro Energy, Entergy Solutions Ltd., Star Tex Power, Stream Energy and Tara Energy; and Competitive Assets on behalf of its REP clients, and specifically including, Spark Energy, Stream Energy, Alliance Power Company, LLC, Bridgepoint Power & Light LLC, Econnergy Energy Company, Freedom Power, Hino Electric, Tara Energy and TriEagle Energy. The commission received reply comments from Joint TDUs, OPC, Suez Energy Resources, NA, Inc (Suez), TIEC, and the REP Coalition.

The term "Retail Electric Provider (REP)" will be used throughout this document in lieu of "Competitive Retailer" unless specifically quoting the tariff or discussing the difference in terms in the tariff. Additionally, REP will include municipally owned utilities and cooperatives that have opted into competition.

The commission posed the following question: Public Utility Regulatory Act (PURA) §43.055 states that an "an electric utility...shall employ all reasonable measures to ensure that the operation of the BPL (Broadband over Power Line) system does not interfere with or diminish the reliability of the utility's electric delivery system. Should a disruption in the provision of electric service occur, the electric utility shall be governed by the terms and conditions of the retail electric delivery service tariff. At all times, the provision of broadband services shall be secondary to the reliable provision of electric delivery service." Should the commission alter the retail electric delivery service tariff to implement this provision or otherwise recognize that some Transmission and Distribution Utilities (TDUs) will be using their distribution facilities to provide BPL?

The TDUs recommended that the tariff not be altered to address BPL issues because it is not an element of retail electric delivery service.

TIEC commented that it is still formulating its position on whether having a provision regarding BPL is necessary. TIEC added that it is not clear where BPL providers would fit in the tariff, and it may be premature to include tariff provisions at this time.

The REP Coalition commented that PURA §43.055 clearly states that a disruption of service should be governed by the terms and conditions of the retail electricity delivery service tariff, and therefore, it should be addressed in the delivery tariffs for TDUs providing service in ERCOT, and utilities providing service in other areas of Texas.

The REP Coalition proposed that a new rulemaking be initiated to address BPL policies for all utilities under its jurisdiction. Most Texas market participants do not have experience with BPL, and more time is needed to study the implementation of BPL in other jurisdictions to identify what issues other jurisdictions have faced, and how those issues were resolved. The REP Coalition recommended a new section be added to the pro-forma tariff as a placeholder, and that once the commission has adopted a rule articulating its policies on BPL and retail delivery service, the TDUs would then file compliance tariffs to implement the new rule. The TDUs responded in agreement that it would be premature to make substantive decisions about BPL at this time, and added that it would be premature to assume that the filing of a compliance tariff will ultimately be needed or would be the proper approach to the implementation of any BPL rule adopted by the commission. The TDUs commented that all issues related to BPL can and should be dealt with outside of the tariff, in a separate rule, and that there is no rationale for inserting a placeholder for BPL policies in the tariff at this time.

Commission response

The commission agrees with the REP Coalition that PURA §43.055 establishes the secondary nature of BPL services to reliability and states that disruptions in service shall be governed by this tariff. Therefore the commission amends Sections 4.2.5 and 5.2.5 to recognize the priority of electric service over communications service that the statute establishes.

§25.214

The TDUs commented that the phrase "and to standardize the terms of service among TDUs" should not be added to subsection (a) of the rule because the reason for adding it is unclear and the phrase "terms of service" has no meaning in the tariff. The TDUs stated that the language appears to have been taken from the Customer Protection Rules. If the intended meaning is to require all TDUs to offer the same services, it conflicts with the company specific portion of each utility's tariff, but, if the purpose is to require all TDUs to abide by the tariff, it is redundant and unnecessary.

Commission response

The commission understands that there may be certain Discretionary Services that are company specific (not standardized) but one of the purposes of this rulemaking is to establish standardized terms and conditions of service. In general, the amendments that are being adopted in this rulemaking proceeding will increase the level of standardization, because more standardization will facilitate REP participation in the retail market in all of the TDU service areas. Therefore, the commission declines to make the requested changes to the rule.

The REP Coalition commented that to the extent that BPL is addressed in this rulemaking, including through the addition of a placeholder in the tariff, language should be added in subsection (a) to recognize that §25.214 applies to BPL. The TDUs disagreed with this proposal and argued that BPL should be addressed separately, outside of this rule and tariff.

Commission response

The commission disagrees that the requested changes to subsection (a) or (c) are necessary but does agree that the tariff should address the secondary nature of BPL to reliability and makes changes to Sections 4.2.5 and 5.2.5 in this regard.

The TDUs commented that the proposed sentence referencing "minimum, mandatory requirements...unless otherwise specified" should not be included in subsection (c) of the rule or in Section 3.1 of the tariff, and argued that the statement has no clear meaning and creates confusion.

The TDUs stated that the fact that minimum mandatory language is found in the Customer Protection Rules does not mean it is appropriate in the tariff. The TDUs argued that the "minimum mandatory" language is appropriate in the Customer Protection Rules, because: the REP is primarily unregulated and free to offer services however it chooses, so long as it complies with the minimum mandatory standards, while all services provided by the utility must be approved by the commission and are governed by the tariff; the Customer Protection Rules address procedures and policies designated to protect the Retail Customer; and the tariff governs operational issues. The REPs disagreed and stated that the tariff provides more than operational guidance; it sets forth minimum expectations by all market participants for any interaction with the TDU. REPs, their customers, and the TDU are protected by the tariff and the tariff should state clearly that each Retail Customer is entitled to these protections.

The TDUs also offered the following possible interpretations of the language, and arguments for why the language should not be included for each possible interpretation.

The TDUs noted that a possible interpretation of the "minimum mandatory" language in the tariff is that it allows service requirements that are more stringent than those contained in the tariff to be adopted elsewhere, which would contradict the requirement in §25.214 that Chapters 4 and 5 of the tariff be used "exactly as written" and may only be changed through a rulemaking, and would damage the necessary and legal link between a utility's services and its rates and charges.

The REP Coalition replied that they agreed there could be confusion with the phrase "used exactly as written" and referenced their proposal for addressing this in their initial comments. The REP Coalition stated that one of the difficulties experienced by REPs and Retail Customers is the ambiguity between the tariff and other rules or protocols, and that while it cannot cover all of the detailed requirements, it should set minimum requirements and be clear to that effect.

The TDUs suggested that the language could also be interpreted to require enforcement of the specific requirements at a 100% level, which the TDUs stated would be impossible to achieve and would drastically impact staffing and costs. The TDUs recommended that compliance be evaluated on the basis of a performance metric or other evaluation process that looks at compliance over time, and suggested language to this effect. The REP Coalition responded that while REPs and Retail Customers deserve quality service from their TDU they have never demanded or insisted on 100% compliance for every service regardless of the conditions, and that from the inception of this project, the REP Coalition has proposed reasonable performance mea-

sures, including exceptions for force majeure and/or other catastrophic events. The REPs added that until recently, the TDUs rejected REP Coalition efforts to review performance measures along with standardizing services, and now argue that market improvements should not proceed until performance measures are determined, and insist on language that compliance should be judged over time similar to the manner in which transaction performance is judged in §25.88. The REP Coalition recommended that the commission reject these arguments and move forward with expedited implementation.

Another interpretation suggested by the TDUs was that it was to indicate that the new standardized Discretionary Services described in Chapter 6 are minimum mandatory, but that other Discretionary Services may be offered as well, in which case the language should be amended. The TDUs recommended that if the language is adopted as proposed, it should be located only in Section 3.1 of the tariff and should not be repeated in the rule.

Commission response

The commission agrees with the REPs that the tariff provides more than operational guidance; it sets forth minimum expectations by REPs and Retail Customers for any interaction with the TDU. These services must be provided by each TDU exactly as written in the tariff. The commission agrees that the terms minimum and mandatory can be confusing depending on the perspective of the entity making the judgment. Because the original intent of the language was to provide better customer service when feasible, the commission determines that the original proposed language could cause misinterpretation and the commission agrees to remove the minimum and mandatory standard. The commission retains the language in Section 3.1 of the tariff that the TDU will use reasonable diligence to comply with the operational and transactional requirements and timelines, which more adequately addresses the 100% compliance expectation the TDUs expressed. The commission, however, declines to add language specifying that compliance will be judged over time because it would be inappropriate to limit the commission's authority to pursue enforcement action when a violation of the tariff warrants such action.

The REP Coalition commented that existing language in subsection (c) requires that Chapters 1, 3, 4, and 5 of the tariff be "used exactly as written" which could be construed to refer to the actions that the TDUs may take based upon the tariff. This creates potential conflict and ambiguity in interpreting the tariff's requirements. The REP Coalition was concerned that this language could conflict with the "minimum mandatory" language found in §25.214(c) and Section 3.1 of the tariff as published, with the unintended consequences of preventing a TDU or the market from innovating or going beyond the minimum requirements of the tariff. The REP Coalition recommended that §25.214(c) be revised to require that Chapters 1, 3, 4 and 5 be "incorporated verbatim" into the TDU's tariff Chapters 1, 3, 4, and 5. In reply comments, the TDUs commented that they have significant concerns about the "minimum mandatory" language proposed for inclusion in §25.214. The TDUs stated that the REPs make clear that their intent in recommending this language is to allow forum shopping for market rules that go beyond the "minimum" standards of the tariff which the TDUs strongly disagree with. The TDUs requested that the commission make clear that the tariff governs and that timeline and specific service requirements considered at length and adopted in this rulemaking should not be revisited in market forums. The TDUs commented that allowing different timelines or service descriptions to be adopted outside of the tariff, without commission consideration, will negatively impact the necessary linkage between their requirements and the rates charged for the services by the TDU. The TDUs recognized that multiple references to "Applicable Legal Authorities" are included in the tariff, but stated that they generally point to market procedures or processes that implement, not govern, specific field performance requirements or timelines. The appropriate place for dealing with process and implementation issues is the tariff and neither the rule nor the tariff should contain language suggesting that the terms of the tariff can be generally overruled in the market. The TDUs stated their opinion that the market rules should govern in place of the tariff only when the tariff specifically points to those rules, and therefore recommended that "minimum mandatory" language be deleted from the published amendments to the rule and Section 3.1, and that the REP Coalition's recommendation to change the phrase "exactly as written" not be adopted.

Commission response

The commission agrees with the TDUs that a great deal of time has been spent in this rulemaking to address issues in the retail market and specifically the timelines associated with performing services. While the commission understands that other entities must take measures, and adopt specific guidelines by which to implement these tariff provisions, those entities are not free to deviate from the requirements contained in this tariff. Therefore, this tariff, and the individual provisions contained herein shall not be generally overruled in stakeholder forums. However, the commission notes that from time to time, the TDUs may agree to meet performance standards that exceed the requirements in this tariff and commission rules in order to effectuate market improvements, and the commission does not intend for the adoption of amendments to the rule or the discussion of the reasons for doing so in this order to impede such progress. Based on the comments of the TDUs the commission recognizes that the proposed minimum mandatory language has proved confusing and therefore removes the minimum mandatory language from the rule. However, the commission retains the "due diligence" language for performance by the TDU within the tariff.

The REP Coalition also recommended the addition of language to subsection (c) to require that the tariff "be applied uniformly by and among all TDUs." The TDUs opposed this proposal and commented that this language will not make the tariff be applied uniformly, and leaves questions regarding which interpretation should apply if there are multiple interpretations of a provision, and who should dictate this. The TDUs stated that the provisions of the tariff should speak for themselves and the commission must address application issues provision by provision rather than generally through this requirement. The TDUs added that if they are mandated to uniformly apply the provisions of the tariff, the REPs should also be required to uniformly interpret and apply the tariff and other market rules. The TDUs stated that they incur significant costs in attempting to deal with the wide variation in REP capability, familiarity with how the market operates and familiarity with the rules and interpretation thereof, and that the market is far more affected by REPs' lack of uniformity in interpreting and implementing market rules than by any lack of uniformity by TDUs.

Commission response

The commission requests that the market participants and Staff work towards a common understanding and application of the rule and tariff requirements. However, the commission is concerned that the proposed language would have an end result

in which instances of non-uniform practices and interpretations would be resolved by adopting the practice that would involve the least effort from TDUs. Therefore, the commission declines to amend the section as proposed.

Comments on the proposed pro-forma delivery service tariff.

Chapter 1 Definitions

The REP Coalition noted that "Access" and "Protocol" are capitalized, but not defined and suggested that they remain undefined, and be uncapitalized. Joint TDUs agreed with regard to "Access," but stated that "Protocol" is defined in the market, especially as a reference specifically to ERCOT protocols, and so should remain capitalized.

Commission response

The commission agrees that "Access" and "Protocol" are not defined and need not be defined.

Joint TDUs recommended restricting "Billing Determinants" to data which can be transmitted using a TX SET transaction. The REP Coalition replied that all items listed as "Billing Determinants" in the definition should be available, and TX SET transactions should be created for them, if they don't exist. The REP Coalition did not believe that the definition in the tariff should be constrained by existing TX SET capability.

Commission response

The commission agrees with the TDUs that Billing Determinants should be restricted to data that can be transmitted by using a TX SET Transaction. However, the commission also agrees the REP should have information on what they are being billed, therefore, the commission requests that TDUs be prepared to explain any part of the bill to the REP.

The REP Coalition recommended that "Construction Service" be defined to exclude installation of single-phase, self-contained meters. Joint TDUs noted that installation of this type of meter may or may not include Construction Service depending on the exact situation at the site, and so should not be excluded.

Commission response

The commission agrees with Joint TDUs that some situations exist where installation of single-phase, self-contained meters may include Construction Service, and declines to amend the language.

The REP Coalition suggested a definition of "In Writing" that specifies that a SET transaction must be used for a particular type of notification, if the necessary SET transaction exists. Joint TDUs replied that this is unnecessary and referred to Section 3.8 of the tariff as providing necessary guidance.

Commission response

The commission addresses necessary changes in Section 3.8 and makes no change to the definition section to accommodate this request.

Joint TDUs recommended removing "unless otherwise determined by the commission" from the definition of "Meter or Billing Meter," and removing a specific reference to §25.311 in favor of "Applicable Legal Authorities."

Commission response

The commission does not agree to remove "unless otherwise determined by the commission" or the specific rule reference. Metering technology is improving, and it is beneficial to allow flexibility in the tariff to accommodate changes in laws or rules that would make competitive metering legally available to all customers. However, the commission agrees that a reference to Applicable Legal Authorities is also appropriate, and therefore adds "and other Applicable Legal Authorities" after the reference to §25.311.

Joint TDUs suggested adding language to the definition of "Tamper or Tampering" to clarify that an alteration is Tampering if the TDU cannot read the meter in the usual manner for that meter. The REP Coalition responded that situations exist where a meter is inaccessible for the TDU to read in its normal manner, but the reason for the inaccessibility is not necessarily tampering. Therefore, as long as the TDU is able to read the meter, the situation should not be regarded as tampering.

Commission response

The commission agrees with the REP Coalition that not every instance in which a meter is not accessible is tampering, and believes that access issues such as those described by the Joint TDUs are adequately addressed this tariff.

Section 3.1 Applicability

The REP Coalition supported the addition of language in this section that clarified that the provisions of the tariff set forth minimum, mandatory standards for the TDUs. The REP Coalition stated that it is important to establish a baseline of performance expectations that all TDUs must adhere to. The REP Coalition also supported inclusion of the language requiring the TDUs to use reasonable diligence to comply with the operational and transactional requirements and timelines for the provision of service as specified in the tariff, but also recommended inclusion of language imposing the reasonable diligence requirement on the TDUs' provision of service under Applicable Legal Authorities "since many transactional requirements are specified in ERCOT protocols and market guidelines, and not just the tariff." The REP Coalition understood that this language was intended to recognize the existence of unusual circumstances that would prevent strict compliance with the tariff. The REPs recommended an additional means to address this concern through the establishment of performance measures that do not necessarily contemplate 100% compliance at all times.

Joint TDUs responded to the REP's comments, stating that the REPs wanted to create an opportunity for "forum shopping" for market rules that go beyond the "minimum" standards of the tariff. The TDUs objected to this approach, and requested that the commission make it clear that the tariff governs, and that any requirements in the tariff may not be revisited in other market forums. "Although other market forums are appropriate for dealing with process and implementation issues, that should not be allowed to override policy decisions made by the commission in this proceeding." The TDUs also stated that allowing the adoption of stricter standards in other forums will increase TDU costs, with the result that rates will not be determined by the commission.

Joint TDUs asserted that the meaning and the reason for adding the "minimum mandatory" language are not clear. Joint TDUs further asserted that there is great potential for confusion, misinterpretation, and argument over this language, and for that reason, it should not be included. The Joint TDUs also reiterated their comments regarding the minimum mandatory language, as argued in comments regarding the rule.

Commission response

Consistent with the commission amendments to the rule, the commission deletes the "minimum mandatory" language from this section, but retains the language regarding reasonable diligence. The commission agrees to extend the reasonable diligence provision to Applicable Legal Authorities, to effectuate the requirements of the tariff. Consistent with the commission discussion in connection with amendments to the rule, the TDUs may agree to meet performance standards that exceed the requirements in this tariff and commission rules to effectuate market improvements, and the commission does not intend that this order would impede such progress.

Section 3.2 General

The REPs stated that while uniform delivery service is important within a TDU's service area, it is just as crucial to have that uniformity among the TDUs, which is not sufficiently addressed by the proposed language. The REPs proposed additional language requiring uniform application of the tariff and Applicable Market Rules within a TDU territory as well as among all TDU service territories.

The Joint TDUs suggested that the proposed sentence at the end of this section be removed, as PURA §39.203(c) requires that the terms and conditions be "reasonable and comparable," not "uniform." The Joint TDUs also contended that the provision is redundant with the previous paragraph in Section 3.2 as well as Section 3.7, if it is intended that the services are provided to REPs on a non-discriminatory basis. Joint TDUs stated that if the intent is something different, then the meaning is unclear, and the amendment could have unintended consequences. The Joint TDUs also responded to the REPs' comments that the requirement that the tariff be uniformly applied may be problematic if there are multiple interpretations of a tariff provision, and that this requirement conflicts with §25.214(c), which allows TDUs to modify Chapters 2 and 6 of the tariff to reflect "individual utility characteristics and rates." The TDUs stated that the notion of total uniformity among the TDUs is unrealistic. Additionally, the REPs should also be required to uniformly interpret and apply the tariff, especially since REPs are not in agreement over how they interpret the tariff.

Commission response

The commission finds that one of the main purposes of this rulemaking proceeding has been to standardize certain processes among TDUs. While all TDUs are not expected to have the exact same systems, TDUs must implement the expectations set forth in this tariff and these should be standardized among all TDUs. The commission finds this language necessary and appropriate, and declines to amend the proposed rule.

Section 3.6 Changes to Tariff

The REP Coalition stated that nothing in the proposed amendments requires a TDU to give advance notice to REPs of changes in the tariff or changes in the TDU's application of the tariff. The REP Coalition recommended requiring a TDU to give REPs 20 days notice. In addition, the REPs stated that nothing in the tariff requires a TDU to give REPs notice of commission approved rates before the rates take effect, and recommended additional language to require this notice. The TDUs disagreed with this comment, stating that REPs could monitor a rate case without intervening. However, the TDUs recommended changes to the REPs' suggested language, should the commission adopt this requirement, including that notice only be required for a material change, and that posting a notice on the TDU's website or providing notice by email to all REPs operating within its territory would be sufficient notice.

Commission response

The commission finds that there should not be many changes, if any, to the interpretations of the TDU tariff. If a TDU finds it necessary and within its rights to change the way it is applying a part of its tariff, it needs to send notice to the designated contacts for changes in interpretation at least 30 days in advance so that the REP has adequate time to prepare for the change and to file a complaint with the commission if it deems necessary. The commission therefore, amends this section to this effect. However, the commission agrees with the Joint TDUs that REPs have means through simple monitoring of commission proceedings to find out if a TDU's rates are changing. Therefore, the commission determines that there is no need for special notification for rate case changes.

Section 3.8 Form of Notice

The Joint TDUs recommended that an additional sentence be added making it clear that the "designated contact" who receives notices may be different individuals for different types of communication, to provide flexibility to the REPs and TDUs.

Commission response

The commission agrees with the Joint TDUs that the tariff should allow for multiple contacts based on the type of notice and makes the proposed changes to the tariff.

Section 3.17 Waivers

Joint TDUs recommended that the proposed sentence added at the end of this section be removed, as it is redundant with the non-discrimination language of Section 3.7. Joint TDUs also asserted that this language could be interpreted as undercutting the waiver provision. "The purpose of a waiver is to make a one time exception. However, if the proposed language is added, an argument could be made that the TDU must waive the requirement for all REPs if a waiver is granted to one." The REP Coalition responded that waivers need not be offered to all REPs if offered to one; they need only be offered to those that are similarly situated. The REP Coalition supplied additional language to clarify this position.

Commission response

The commission agrees with the TDUs that this sentence is redundant with Section 3.7, is therefore unnecessary, and should be removed. This change avoids the need for the language proposed by the REP Coalition.

Section 3.19 Public Service Notice

The Joint TDUs recommended that this section be removed from the tariff. Joint TDUs stated that the issuance of public service announcements should be handled outside of the tariff, that the term "public service notices" is overly broad as it is not defined, and, to the extent that the TDU is required to perform services, the costs of those services should be recovered from ratepayers. The REPs responded that it is appropriate that TDUs notify customers of electric grid issues.

Commission response

The commission has the authority to require the TDUs to make public notifications for many different purposes and declines to remove this section from the tariff.

Section 4.3.1 Eligibility

Joint TDUs stated that subsection (3) should be changed to reflect that the provisions of subsection (1) must be satisfied before the REP can be deemed eligible because the REP should not be considered eligible for service until the TDU has received notice that the REP has successfully completed testing. Joint TDUs added that they should be allowed two Business Days from the receipt of the executed Delivery Service Agreement from the REP to execute the agreement.

Commission response

The commission agrees that the provisions in (1) should be satisfied before the delivery service agreement is executed and that the TDU should have two Business Days to execute the agreement. The commission amends subsection (3) accordingly.

Section 4.3.2 Initiation of Delivery System Service (Service Connection)

The REP Coalition stated that they were concerned with the removal of the timeline associated with the TDU's fulfillment of requests for new Delivery System Service because a gap now exists between the time that Chapter 4 and Section 6.1.2 will each become effective. This gap is extremely problematic for REPs and Consumers. The REP Coalition commented that Section 6.1.2 may not become effective for all TDUs until 2008, and it is imperative that expectations for basic services such as service connections associated with move-ins and disconnections associated with move-outs are known and able to be communicated to Retail Customers before 2008. The REP Coalition proposed language for this section to this effect. The REP Coalition recommended that four of the most basic TDU services in Chapters 4 and 5 of the tariff be effective at the adoption of the rule and urged the commission to require expedited proceedings at the conclusion of this rulemaking in which to standardize all other TDU Discretionary Services.

In reply comments, the Joint TDUs strongly supported the approach used in the published amendments, which set forth the timelines, applicable to the standardized Discretionary Services in the Chapter 6 Rate Schedules rather than in Chapter 4 or 5. However, the Joint TDUs stated that if the service description for the move-in service were to be included here, the language proposed by the REP Coalition is incomplete. The Joint TDUs requested the REP Coalition's proposal be rejected and the complete and detailed description be contained in Chapter 6, with the Joint TDU's suggested amendments.

Commission response

The commission desires to have the changes proposed in this tariff and in Chapter 6 effective as soon as possible but realizes that some of these changes will require TDU system changes and may require TX SET changes as well. The commission believes that standard move-ins, move-outs, meter re-reads and standard reconnects will not require such changes, and therefore finds it appropriate to include the requirements for these standard services in Chapters 4 and 5 so that they may be implemented in July of 2006. The commission agrees to leave the items that require systems and process changes in Chapter 6 but moves some of the implementation dates to a date earlier than was proposed. The commission believes that there is enough time to implement the Texas SET changes, TDU and REP systems changes, and TDU discretionary service charges by July 1, 2007, and therefore finds that July 1, 2007 is the appropriate date for the implementation of Chapter 6.

Section 4.3.3 Requests for Discretionary Services Including Construction Services

The REP Coalition commented that the term "Applicable Legal Authorities" is not the most appropriate term to use to refer to the technical requirements involved when a TDU notifies a REP that a service request has been completed. The REP Coalition recommended that "Texas SET" replace "Applicable Legal Authorities" because it is more appropriate and contains the technical requirements for transaction processing. The TDUs disagreed, stating that "TX SET" is included in the term and the broader term is more appropriate because requirements for both requesting service and sending notification of completion of service are contained in the Retail Market Guides, which are not embraced by the term "TX SET." The TDUs added that the use of the more narrow term could be construed as limiting the ability of the commission to impose requirements.

Commission response

The commission agrees with the Joint TDUs that the term "Applicable Legal Authorities" is the appropriate term, for the reason expressed by the Joint TDUs and declines to amend this section.

The REP Coalition requested that the requirement of the proposed tariff that the transaction notifying a REP that a Discretionary Service request has been completed include the time that the service was completed in addition to the date. The REP Coalition stated that a TX SET change would not be required because the transaction already includes a date and time stamp. The REP Coalition commented that some TDUs transmit the date and the time that the transaction was generated, rather than when the work was completed. This information is important for the consumer and the commission in ensuring that service requests are completed within the required timeframes.

In reply comments, the Joint TDUs requested that this proposal be rejected. The Joint TDUs commented that the REPs do not consider that it would be enormously difficult, time consuming and expensive to implement such a requirement due to the changes that TDUs would have to make to capture the exact time of completion in the mobile data system and transfer that information to the transactional system used to send the TX SET discretionary service order transaction (650). One TDU has estimated that it would cost $3 million to change its systems to include this information on the TX SET discretionary service order transaction. Joint TDUs added that they expected that REPs would have to change their systems for them to accept the information and use it. Joint TDUs stated that the approximate service completion time is available in the TDU's mobile data system and can be provided to the REP upon request. Joint TDUs stated that with the exception of Priority Reconnects, the timelines for provision of service in the published amendments are day-based and are not dependent upon service being provided at a specific time. Additionally, the discretionary service order transactions are currently batched multiple times daily, providing the REPs with timely notification that the transactions have been completed, and therefore what little benefit there might be to the market is significantly outweighed by the substantial cost. Joint TDUs stated that there would be additional expense for the entire market and ERCOT if transactions other than service orders had to be revised so that they could also carry the time stamp. The TDUs added that they have had few requests for this information, it is not necessary for an efficient market, and should not be required on the transactions.

Commission response

The changes proposed by the REP Coalition to include date and time on the transaction do not provide a significant benefit to the market. The commission has eliminated timeframes for all Discretionary Services so that the date is the only item that must be captured. The exact time the service was completed is not relevant to the charges and is unnecessary. However, as the Joint TDUs noted, a REP can call the TDU to find out the approximate time the service was completed if the customer inquires.

Section 4.3.4 Changing of Designated Competitive Retailer

Joint TDUs commented that the TDU should not be prevented from charging for an out-of-cycle Meter read associated with an off-cycle switch, if a trip is made to read the Meter and estimation occurs because of a failure of the Meter equipment. Joint TDUs commented that in this event, as well as in denial of access, the TDU should be allowed to bill for the time and effort expended to accomplish the Meter Read even if an estimate is the result because the process will have been more costly to the TDU than actually performing the Meter read due to the necessity of making the estimate.

Joint TDUs commented that the market is encouraging estimates to be made for the off-cycle switches that occur in a mass transition in order to speed up the process, and that the TDU should be able to charge for the time and effort expended in making the estimate. In reply comments, the REP Coalition strongly opposed this proposal, and argued that estimating a meter read from the office or through a computer program does not warrant the fee that is to be charged when the TDU sends a truck to the location.

The REP Coalition supported the commission's changes to the section that prevent a TDU from assessing a charge for an out-of-cycle meter read in conjunction with a switch when the meter reading is estimated. The REP Coalition noted that this provision is important in light of the market's efforts to devise a Mass Customer Transition process that can facilitate the movement of large numbers of Retail Customers in REP default situations where the volumes prohibit a TDU from completing actual meter reads. In reply comments, Joint TDUs disagreed with the REP Coalition because there is significant time and effort involved in performing such estimates, and significant costs are incurred that are not otherwise included in the rates which the TDU should be allowed to recover.

Commission response

The commission disagrees with the TDUs that the TDU should not be prevented from changing for an out-of-cycle Meter read associated with an off-cycle switch, if a trip is made to read the Meter and estimation occurs because of a failure of the Meter equipment. The commission finds that a charge should not be assessed as this matter is not within the control of the customer or REP, and it is in the best interest of the TDU to find out about the malfunctioning meter as soon as possible. However, the commission agrees with the Joint TDUs that if a trip is made and the TDU is unable to read the meter because a customer denied access to the meter, the TDU should be able to charge for the trip. The commission also agrees with the REP Coalition that charges for estimation in the office are likely different from charges associated with making a trip to the premise and therefore the commission finds that a separate charge for estimation without a trip is appropriate, and amends Chapter 6 accordingly. Since the TDUs do not currently have a separate charge for estimation that has not required a trip charge, this may be implemented when the utility implements a new Chapter 6.

The commission agrees with the REP Coalition that services performed to help effectuate timely mass transitions are an important aspect of this issue, and also agrees with the TDUs that they should be able to charge for such service. The commission finds that any charge should be based on the specific service that was performed, for the reasons discussed above, and that this charge should be assessed to the exiting REP. Whether the TDU or market determines that an out-of-cycle read or an estimation without a trip is necessary to effectuate a timely mass transition, it is the exiting REP, not the customer, or acquiring REP or POLR who has necessitated this service and who should therefore incur any charges. However, the acquiring REP or POLR may request and pay for an out-of-cycle meter read should it deem it necessary.

OPC commented that the vagueness of the definition of "Applicable Legal Authorities" may prove to help, harm or simply confuse all entities involved, and may result in confusion regarding a TDU's determination not to change a Retail Customer's REP. OPC proposed that the TDU be required to notify, with detailed rationale the Retail Customer's requested REP within 24 hours of a Company determination not to change the REP designation. In reply comments, the Joint TDUs stated that OPC's recommendation that the TDU notify the REP if a request to switch a Retail Customer to that REP is not honored is unnecessary. The Joint TDUs stated that any switch reject would be due to a REP being in default, of which the REP would already be aware. Additionally, the switch is rejected by sending a TX SET transaction to the REP, which serves as notification.

Commission response

The commission agrees with the Joint TDUs that the REP should already be aware of its default status. The commission does not believe this is confusing and declines to amend the language.

Tenaska requested that the commission revise the tariff as appropriate to require TDUs to provide historic customer usage information to a requesting POLR once it has been determined that the customer in question will be transitioned to POLR service in a Mass Drop or analogous process. Tenaska recommended that the tariff should provide that the TDUs will make the information available upon request by the POLR either in a separate transaction or through the normal TX SET process, but in any event should be required to make the information available at such a time that it is available to the POLR when it submits the switch request to ERCOT.

Commission response

The commission agrees that the POLR should be given the historical usage as soon as possible after the POLR submits a switch request to obtain the customer. The commission disagrees that this is an appropriate place to address this issue, and whether such information should be submitted before or after the submittal of a switch, because the details for this process are not specified in this tariff. Additionally, the commission notes that Tenaska currently has a declaratory order pending on this very issue at this time, and this issue is also being addressed in Project 31416.

Section 4.3.6 Identification of the Premise and Selection of Rate Schedules

The REP Coalition stated that in subsection (1), the defined term "Premises" is not appropriately used in the description of non-metered loads because non-metered loads do not fit the definition of Premises and are typically referred to as Points of Deliv-

ery. Joint TDUs responded that the term "Premises" is defined to include "related commonly used tracts," and this appropriately embraces unmetered loads, most of which are street lights on the roadways of a city, county or other jurisdiction. The TDUs added that an additional provision has been added to cover other non-metered loads, where multiple company-owned Points of Delivery may be grouped under one ESI ID.

Commission response

The commission agrees with the Joint TDUs that Premises is the appropriate term and amends the title to agree with the description.

In reply comments Joint TDUs stated that subsection (2) should be deleted because the long standing practice for TNMP, has been that when the temporary service becomes the permanent service, the same Meter is used, and the ESI ID is not changed. Joint TDUs stated that this provision does not pose a hardship for the vast majority of REPs and should not be required to be changed for the convenience of only one.

Commission response

The commission is amending this provision of the tariff to limit the circumstances in which an ESI ID may be used for temporary and permanent services at the same location. The intention is to limit the circumstances to those in which the permanent and temporary service are similar. If an ESI ID has been used for construction of several buildings, it should not then be used as the permanent service to a single building. If the permanent meter and temporary meter are used for exactly the same premises, such as the construction and sale and then occupancy of a single house at one address, then using the same meter for temporary and permanent service would be allowed. The commission changes the tariff to reflect this intent.

Joint TDUs stated that subsection (3) relating to assigning load profiles to ESI IDs is unnecessary and should not be adopted. The REP Coalition disagreed.

Joint TDUs stated that the complex issues surrounding the role of all market participants in load profile assignment and maintenance are currently covered in the ERCOT protocols and that the obligation of various market participants should be defined there, rather than the tariffs. The REP Coalition agreed that load profile assignment and maintenance is a complex issue, the details of which are appropriately covered in the ERCOT protocols, and more precisely, the Load Profiling Guides. However, the proposed subsection articulates the TDU's obligation to identify, assign and maintain load profiles and meter reading cycles for ESI IDs, which the REP Coalition believes to be appropriate for the tariff.

Joint TDUs stated that if adopted, this language should be changed to reflect the fact that the TDU cannot provide information that it does not have and cannot ensure validity of information provided by others. Joint TDUs stated that they currently identify the initial load profile, based on equipment installed, which determines the TDUs assignment of the initial rate code, profile type, etc, but there are factors that the TDU will not be aware of such as whether the Retail Customer will operate the Premises as a business or residence. Joint TDUs stated that it was therefore inappropriate to require the TDU to "identify, assign and maintain...the *appropriate* load profile...necessary for *accurate* settlement." Joint TDUs commented that if this provision is retained, it should be changed so that it does not inappropriately require the TDU to be responsible for, and possibly serve as the guarantor of, the accuracy of information it does not have or provide. The REP Coalition disagreed and gave excerpts from the ERCOT protocols and Load Profiling Guides to contradict the Joint TDUs' claim, and to show that the TDU plays a vital role in maintaining the appropriate load profile for all ESI IDs. The REP Coalition argued that the tariff needs to clearly delineate these responsibilities. The TDUs requested an amendment to the phrase "other information necessary for the accurate settlement of the wholesale market" to limit the TDU's responsibility for accuracy of information to information that a TDU provides. The REP Coalition proposed that the TDUs be responsible for any information required by ERCOT.

The REP Coalition supported the amendments to this section of the pro-forma tariff, and made recommendations to clarify and enhance the section.

Commission response

The TDUs have the responsibility to assign and maintain ESI IDs and since this tariff establishes requirements for TDU performance, this tariff is an appropriate place to address this matter. The commission realizes that the TDUs must get certain information from REPs in order to accurately maintain the ESI ID and profile for ERCOT Settlement purposes. The commission notes that under Section 4.3.6, the REP must notify the TDU of changes that affect the applicability of rate schedules. Additionally, the commission realizes that it is important that the TDU be made aware of changes in a Retail Customer's electrical installation or use of Premises in order to accurately maintain the ESI ID and load profile and adopts changes to Section 4.3.6 to reflect that the REPs must also notify the TDU of any changes in a customer's electrical installation or use of Premises. The TDU, however, is responsible for accurately reporting the changes in the profile assignments.

ERCOT commented that this subsection requires the TDU to notify the REP and the Independent Organization (ERCOT) of the appropriate load profile, the initial Rate Schedule assignment and any changes or revisions to data associated with an ESI ID, including changes or revisions in the assignment of a Rate Schedule. ERCOT stated that currently the TDU sends Rate Schedule information on a transaction to ERCOT, which ERCOT forwards to the appropriate REP, but ERCOT performs no validation on the accuracy of the Rate Schedule and does not store the Rate Schedule. ERCOT commented that any requirement for ERCOT to perform such validation would require system and business process changes at ERCOT. The TDUs responded that under the proposed amendments, ERCOT is not required to perform this function.

Commission response

ERCOT is responsible for the accurate accounting of the market and may elect to use a verification process it deems necessary to accomplish its obligations. However, the commission agrees with the Joint TDUs that in this rulemaking ERCOT is not being specifically required to perform validations of rate schedules.

Joint TDUs stated that the requirement in subsection (5) that the TDUs provide information distinguishing between multiple ESI IDs at the same service address would be very difficult to implement. To implement the requirement on a going forward basis, the TDUs would have to develop a standard set of codes for making the required distinction; transactions would have to be modified to carry the information; and ERCOT would have to modify its portal. Additionally, Joint TDUs claimed that to go back and identify the codes that should be applied to existing

installations would take months. The REP Coalition requested that the commission reject these arguments because the TDUs incorrectly suggest that this requirement would mean the TDUs would have to develop a standard set of codes to make the distinction when terms such as "pool," "barn," or "sprinkler" could be used; codes would only confuse the issue; and the ERCOT web portal already has a second Address Line that could be used for descriptive information. The REP Coalition commented that the market should not ignore the opportunity to reduce the chance of enrollment errors.

Commission response

The commission finds that being able to differentiate between premises is very important to customers and REPs, who must know what premises they are enrolling and/or disconnecting. The commission finds that these changes are necessary and declines to adopt the Joint TDUs' suggested changes to this section.

Joint TDUs stated that in the second paragraph, the proposed additional language requires that all demand ratchets be reset to zero when a new Retail Customer takes service at an existing Premises. Joint TDUs did not disagree with the general concept that demand ratchets should be reset, and noted that this change would only impact TXU ED. Joint TDUs, however, did disagree with addressing such a change in a rulemaking, rather than a general rate case.

Joint TDUs stated that TXU ED's current rates were set using a level of demand billing that results from not resetting the ratchet to zero for a new Retail Customer, which means that the base rates were calculated using a higher level of demand, and thus are lower on a per-unit basis, than would have been the case had the rates been set assuming that the ratchet would be reset to zero with a new Retail Customer. Joint TDUs stated that it is improper to impose this change to billing units in a rulemaking, instead of a rate case where the concurrent impact on the associated rate would also be taken into account. They cited the Administrative Procedure Act and a Texas Supreme Court ruling in support of their argument. Joint TDUs recommended additional language to provide that the requirement to reset the demand ratchet to zero is effective only if the TDU's rates are not set based upon a different approach, but, TXU ED agreed to eliminate no later than its next general rate case, the practice of using Premises information for billing when a new Retail Customer moves into an existing Premises.

The REP Coalition responded that the commission is not changing TXU ED's rates in this proceeding, and that it is appropriate for the commission to set policy in a rulemaking such as this. The REP Coalition stated that it did not disagree that such a change in policy may affect TXU ED's revenues, but no utility is guaranteed a specific rate of return, only an opportunity to earn a reasonable rate of return. The REP Coalition stated that if a change in commission policy affects revenues, such that the TDU no longer has an opportunity to earn its authorized rate of return, the utility can file a rate case.

Commission response

The commission concludes that it is appropriate for the commission to set policy in rulemakings and that the existing policy is problematic for some customers. Therefore, changes are necessary. However, the commission understands that TXU ED's current base rates were set based on the assumption that the demand ratchet is not reset for a new customer. Therefore, the commission finds it appropriate for the TDU to discontinue this practice no later than the conclusion of its next general rate case and makes changes to the proposed tariff to reflect this.

Joint TDUs commented that in the last paragraph, language should be added to make it clear that a change in Rate Schedule will not be applied in the billing cycle in which the change is requested, when the Billing Determinants are not available to bill under that new rate. Joint TDUs stated that this is correctly stated in Section 4.8.1.5, and that this section should be consistent with that section.

Commission response

The commission concludes that it is appropriate to clarify this language consistent with Section 4.8.1.5.

The REP Coalition recommended that the tariff require the TDUs to provide the REP 60 days notice once it is determined that a Retail Customer is no longer eligible to receive service under its current rate schedule to allow the REP time to communicate with the Retail Customer and ensure they understand the change and the impacts to their monthly bills. The TDUs responded that this proposal should be rejected because the requirement would force billing of a Retail Customer on an incorrect rate, could increase cancel/rebills, and would conflict with the overall rate design scheme for transmission and distribution service that was adopted at the initiation of the deregulated market, which recognizes a difference in the applicability of Rate Schedules based on usage. Joint TDUs stated that REPs have been aware that Retail Customers may become eligible for a different rate, based on their usage, from the implementation of the market, and 60 days notice should therefore not be required.

Commission response

The commission agrees with the Joint TDUs and declines to amend the proposed language.

The REP Coalition proposed that notice be sent with a TX SET 814_20 transaction at least two Business Days prior to the ESI ID being billed to the REP by the TDU on the new rate schedule in order for the REP to have sufficient time to process the rate change transaction prior to receiving an invoice based on the new rate schedule. The REP Coalition stated that if the transactions are processed out of sequence, a processing error and/or invoice rejection could occur, delaying billing to the Retail Customer or payment to the TDU. Joint TDUs responded that this is already required by ERCOT protocols and need not be stated in the tariff.

Commission response

The commission agrees this is more appropriately addressed by the ERCOT protocols or ERCOT market guides.

The REP Coalition noted that the last sentence of Section 4.3.6 appears to have been deleted in error, and recommended that language be reinserted that addresses situations where a change in facilities or Rate Schedule requires a different billing methodology. The Joint TDUs agreed that the language in the existing tariff should be reinserted in the last paragraph to make it clear that a change in Rate Schedule will not be applied in the billing cycle in which the change is requested, when the Billing Determinants are not available to bill under the new rate.

Commission response

The commission agrees that the last sentence appears to have been deleted in error and is reinstating the language.

Section 4.3.7 Provision of Data by Competitive Retailer to Company

Joint TDUs recommended that certain language that was added to Section 4.11.1 in the published proposal be relocated here, and that Section 4.11.1 refers to its inclusion in this section. The REP Coalition disagreed because the REP Coalition opposes the additional proposed language in Section 4.11.1 that suggests a TDU will need updated Retail Customer data in order to verify a Retail Customer's identity, regardless of what option the REP has chosen for TDU communications.

Commission response

The commission agrees with Joint TDUs and relocates parts of Section 4.11 here.

Sections 4.3.9.1 Critical Care Residential Status, 4.3.9.2 Critical Care Industrial Customer of Critical Load Public Safety, and 4.3.9.3 Other Company Responsibilities

Joint TDUs recommended that the provisions in Sections 4.3.9.1, 4.3.9.2, and 4.3.9.3 not be adopted because they create confusion with regard to §25.497 regarding Critical Care Customers. Joint TDUs stated that these requirements are similar, but not exactly the same and it is not clear whether this language is intended to change the requirements, and if so what the TDU is expected to do to satisfy the new requirements. If the intention is to modify the requirements in the Customer Protection Rule, then the rule itself should be changed. Otherwise, the tariff should simply reference §25.497, or use the same wording. Joint TDUs stated that at a minimum, the tariff should make it clear that the TDU's duties are set out in the Customer Protection Rule, and reference §25.497. The REP Coalition responded that the provisions are clear, but should be strengthened as they proposed in initial comments.

The REP Coalition argued that the pro-forma tariff is the appropriate vehicle to address a TDU's responsibilities in qualifying and renewing designation of critical care customer. The REP Coalition, however, is concerned that the new language essentially paraphrases §25.497 without adding the necessary detail or clarity that requires the TDUs to affirmatively evaluate whether a Retail Customer actually meets the critical care requirements as opposed to qualifying Retail Customers as critical care based simply on the submission of an application. The REP Coalition stated that the new Section 4.3.9.3 which directs TDUs to "fulfill any other responsibilities pursuant to PUC SUBST. R. §25.497" is unnecessary since they are already required to comply with commission rules. The REP Coalition recommended that this section be revised to clarify the commission's expectations of the critical care qualification process.

Consumers commented that Section 4.3.9.1 omits the time limits of the TDU to evaluate an application and determine a Retail Customer's eligibility for critical care status, and does not address the process for a Retail Customer to appeal a decision made on critical care status. Consumers stated that it is essential that there are no mistakes regarding the status of critical care customers, and the tariffs should be revised to assure that the responsibilities of both the TDUs and the REPs are unambiguous. The REP Coalition responded that they had no objection to the Consumers' language providing clarification on timelines and appealing TDU decisions regarding critical care qualification.

Joint TDUs responded to additional language proposed by both the REP Coalition and Consumers' and stated that the language of the proposed rule, and modifications proposed by Consumer Commenters that duplicate rule provisions in the tariff are unnecessary, and will create additional difficulty if the provisions ever need to be changed. The TDUs reiterated their request that the language be stricken and that modifications be addressed through amending §25.497.

Commission response

The commission disagrees with the Joint TDUs that the proposed changes in this section should not be adopted. While the Customer Protection Rules outline some of the process, more detail is necessary in the tariff to set out the TDU's responsibility to investigate the critical care/critical load applications. The commission also disagrees with the REP Coalition that the reference to §25.479 should not be included in the tariff and declines to make that change. The commission agrees with Consumers that the rule should include a time limit and a process for appeal and changes the rule accordingly.

Consumers stated that exculpatory language excusing TDUs from legal responsibility for their injurious actions should not be permitted in any government approved tariffs. OPC responded in support of these comments. Joint TDUs noted that Consumers did not propose a language change. Joint TDUs stated that the limitation of liability provision found elsewhere in the current tariff, which no party has proposed be changed, has been in place for decades and has been upheld by the Supreme Court.

Commission response

The commission finds that the exculpatory language in this section is appropriate and declines to amend the language.

Section 4.3.13 Customer Requested Clearance

The REP Coalition also recommended that the commission include specific timeframes for field completion in the tariff. The TDUs disagreed that the timelines and descriptions for standardized Discretionary Services should be included in Chapter 4, and noted that the proposed language does not contain sufficient detail.

Commission response

The commission agrees with the Joint TDUs' argument and is adopting the tariff language that was included in the proposal that was published for public comment.

Section 4.3.13.1 Move-Out Request

Joint TDUs and REP Coalition commented that language needs to be changed to reference successful execution of a "move-out" transaction, rather than mere disconnection, as the triggering event for the REP no longer having responsibility for the Retail Customer. Until the move-out is successfully completed by both the TDU and ERCOT, the REP is still the "REP of Record" and is responsible for all charges incurred for the ESI ID on a going forward basis. Joint TDUs added that the REP is still responsible for the applicable charges during the time that they were the "REP of Record." Joint TDUs gave examples of when the original REP should be billed, such as if tampering is discovered, and it takes days to investigate and repair the damage. Joint TDUs stated that under current market rules, and other provisions of the tariff, the REP can challenge any charge as not being properly billed to the REP. Joint TDUs added that inappropriate billing has not been a problem in the market. Joint TDUs stated that if the concern is that REPs will have difficulty collecting these charges after they have lost the Retail Customer, they can be protected through a deposit, or contractual arrangements with

their Retail Customers. Joint TDUs proposed language to make it clear that the REP is responsible for these charges.

Commission response

The commission agrees with the REPs and TDUs that the REP is responsible for any Delivery Service provided to a Point of Delivery until a move-out is effectuated. The commission also agrees that the REP of Record is responsible for charges requested and incurred before the final bill and that the final bill should not be delayed as the longer it is delayed the less likely the REP is to be able to collect from the customer. The commission notes that tampering discovered while the REP is the REP of Record means that the charge has been incurred during the time that the customer is being served by the REP. Therefore, if the TDU discovers at the final meter read that tampering has occurred, tampering charges are appropriately billed to the REP even in situations when the investigation results in a bill that is issued after final invoice. The commission declines to make the change requested by the REP Coalition, and clarifies that the REP is responsible for charges incurred during the time that they are the REP of Record. This section has been amended to Section 4.3.12.1.

Consistent with the commission's decision to include standard move-in, move-outs, re-reads and reconnects in Chapters 4 and 5, the commission adds the timeline for reconnections to Section 4.3.12.2.

Section 4.4.1 Calculation and Transmittal of Delivery Service Invoices

Joint TDUs proposed that the timeline for transmittal of the invoice be extended from within three days of the scheduled meter read date to three days from the actual meter read date. Joint TDUs argued that this would allow ample time for the TDUs while also insuring that the REPs receive timely invoices based upon actual Meter reads. Joint TDUs stated that this would apply when the meter could not be read on the scheduled meter read date.

The REP Coalition strongly opposed the Joint TDUs' request and stated that the TDUs are requesting to send the invoice at their convenience rather than within three days of the scheduled date of the meter read. The REP Coalition stated that this would allow deviation from the published meter reading schedule with no consequence to the TDU and could harm REPs. REPs do not control when an "actual" meter read takes place, would never know when to expect the meter read or invoice, and the practice could result in REPs not being able to bill the end-use customer timely.

Commission response

The commission agrees that a REP needs timely information to bill customers each month. In any month that the TDU cannot read the meter and transmit an actual meter reading to the REP, it must send an estimate within three days of the scheduled meter read date so that the REP may timely bill its customer. The commission declines to make any changes to the rule to reflect the TDUs' suggestion.

The TDUs requested that a parenthetical be added to this first paragraph stating that the company shall separately identify the Delivery System Charges and Billing Determinants to the extent the transaction allows them to be reported on the electronic invoice. The REP Coalition did not oppose this request.

Commission response

The commission agrees that Billing Determinants should be reported to the extent the electronic transaction allows them to be reported. This is consistent with §25.479(c)(1)(L) which requires the REP to provide Billing Determinants on the customer's bill if available to the REP on the standard electronic transaction. However, should the REP have a question about the bill, it should be able to contact the TDU to get any additional information necessary to reproduce the bill. Therefore, the commission agrees to change the rule to reflect this.

Joint TDUs stated that it is important to make clear that the REP may not reject an invoice as invalid merely because it has not received other associated transactions such as the 867 transaction, which reports monthly meter readings. Joint TDUs recommended that the portions of Section 4.4.8 dealing with the dispute process be moved to this section and included as the last two paragraphs as having it in one place will make it clearer and will prevent confusion between disputes about invoice validity and other types of disputes.

Commission response

The items for which a REP may reject an invoice are contained in the TX SET standards and the commission sees no reason for them to be addressed here also, as proposed by the Joint TDUs.

Section 4.4.3 Invoice Corrections

The REP Coalition stated that it believes that the issue of invoice corrections, or what has commonly been referred to as "Back-billing" of unbilled or underbilled charges is a key task to be accomplished in this rulemaking. The REP Coalition does not believe the amendment currently proposed in the tariff fully addresses the current incompatibility. The REP Coalition stated that it strongly believes that the period available to a TDU to issue a bill or to correct an underbilling must fall within a period significantly shorter than the 180 day period available to the REP in order to ensure that the REP has adequate time to receive the charges and bill the customer. To ensure allowing the REPs 30 days to process TDU cancels/rebills, the REP Coalition recommended a reference to 150 days, which is the number of days in which billing corrections may take place and still allow the REP 30 days to bill its customer. Texas ROSE and TLSC agreed. The Joint TDUs disagreed with the REP Coalition's recommendation and insisted that the limitation be changed to reference billing cycles instead of months or days so that the process may be automated.

Commission response

The commission agrees with the REP Coalition that TDUs should have 150 days to bill a REP, so that the REP may have 30 days to bill its customer. The Customer Protection Rules specify a limit, expressed in a number of days, on back-billing. Therefore the automated process developed for this back-billing should be expressed in a number of days, rather than billing cycles.

The REP Coalition also requested inclusion of clarifying language to insure that situations which the TDU fails to timely issue a bill fall within its proposed 150-day allowance. Additionally, the REP Coalition proposed to clarify that the TDU may not include underbillings for adjustments prior to 150 days of the date the invoice was issued or should have been issued. Without these changes, the REPs posited that the tariff may not afford the REP a reasonable opportunity to recover costs associated with an underbilling even if the TDU bears sole responsibility for the underbilling. Joint TDUs disagreed and acknowledged that at market open there were some chaotic circumstances in which

the TDU "no-billed" an account, but stated that this rarely occurs today. Since the TDUs are responsible for supplying usage to ERCOT as well as the REP, if a bill is not issued, it is most likely because the REP has not been properly recognized as the REP of Record in the electronic systems in the market. Joint TDUs also argued that since the REP is in a position to recognize that a problem exists, because it is expecting a bill for the customer, it should be responsible for alerting the TDU if a bill is not received, so that the problem can be timely resolved. Joint TDUs suggested that as a precondition to treating a failure to bill as an underbilling, the REP should be required to notify the TDU if it has failed to receive a bill for one of its customers for two or more consecutive months.

Commission response

The commission agrees with the REP Coalition, that it is the TDUs' responsibility to issue timely bills. The commission agrees to make the changes to the tariff suggested by the REP Coalition. The commission also adds a section on estimated billing to clarify that if an invoice is estimated it must also be trued up within the same amount of time. This is consistent with the commission's decision to require the TDU to obtain actual meter readings.

Joint TDUs stated that in the current market design, the credit is not applied to the re-billed invoice, but instead it is returned with a credit 820 transaction. Therefore, Joint TDUs suggested that payments should be applied as provided by Applicable Legal Authorities rather than "to the rebilled invoice." The REP Coalition agreed with this change.

Commission response

The commission agrees and makes changes to the tariff as suggested by the Joint TDUs.

Joint TDUs opposed the requirement to pay interest on overcharges as they believe that costs will be enormous for each TDU compared to the miniscule amounts of interest that TDUs believe will be paid. Joint TDUs explained that the average TDU bill per residential ESI ID is approximately $30 per month. Even if the overcharge is double what it should have been, the TDUs argue that the interest will only be $0.227. Joint TDUs believe that it will cost far more than this to calculate and render the bill. Joint TDUs stated that if the commission decides to require payment of interest on overcharges, that it could not be implemented by June 2006 and it should not include a requirement of paying interest on the correction of estimates resulting from the Retail Customer's failure to provide access to the meter.

The REP Coalition urged the commission to reject the Joint TDUs' recommendation to delete the interest requirement. The REP Coalition pointed out that the Joint TDUs didn't explain why it would cost so much to implement and noted that upon unbundling of the electric market, the requirement to pay interest on overcharges was brought forward from §25.28(c)(3) to §25.480(d)(3), so the net effect to the customer remains unchanged. However, since the provision was not brought forward into the tariff, the TDUs aren't required to pay interest even if they are the cause of the overbilling. In addition, the REPs stated, the interest calculation downplays the potential magnitude of the issue as $0.227 for a $30 error, when considered in the aggregate could equate to significant impacts to REPs. Moreover, commercial and industrial bills which can be 1,000 times larger than residential bills, make interest on over-billed amounts even more significant. The REP Coalition insisted that TDUs should not benefit from their errors in over-billing REPs and REPs should not be required to take the financial brunt of TDU errors.

Commission response

In §25.480, the commission does not require a customer to pay for corrected charges billed by the REP unless such charges are billed by the REP within 180 days from the date of issuance of the bill in which the underbilling occurred. (The 180-day limit does not apply if the customer tampered with the meter.) Additionally, REPs are required to pay interest on an overbilling even if it is the result of the TDU's error. Therefore, the commission finds that the TDU should be allowed to invoice the REP for the past 150 days, so that the REP has an opportunity to bill its customer for any amount it is invoiced by a TDU. The commission concludes that the arguments of the REP Coalition and Suez are compelling and that interest be paid on overbilled charges. The interest that a REP must pay on overbillings to residential customers in the aggregate and commercial customers can make interest charges a significant amount of money, and for this reason, TDUs that correct an erroneous bill should be required to pay interest, regardless of the class of customer or the amount of the refund. The rule that is being adopted reflects this conclusion.

Consumers stated that from a consumer perspective, invoice corrections and in particular unexpected increases going back up to six months are troubling. They recommended limiting any backbilling to a customer to 30 days. They stated that this would put the onus on the TDUs to get the bills right and get them delivered to REPs in a timely manner. Joint TDUs stated that this is unrealistic as TDUs read nearly six million meters a month and mistakes are going to occur. The TDUs did not believe that thirty days would allow sufficient time for errors to be discovered and resolved.

Commission response

Prior to retail competition, the utilities had six months to find an underbilling error and rebill the customer. In the Customer Protection Rules, the commission continues to allow the customer to be rebilled within 180 days to correct an underbilling. The commission believes that 180 day allowance for the REP to rebill a customer and 150 days for a TDU to rebill a REP are appropriate limits. The commission disagrees with Texas ROSE and TLSC. Thirty days is not enough time to discover errors and to correct them.

Section 4.4.5 Remittance of Invoiced Charges

Joint TDUs suggested the addition of language to make it clear that the original payment deadline applies to an invoice that is rejected by a REP if it is ultimately determined that the invoice originally sent was valid and that the REP should not have rejected the invoice. The REPs argued that this proposal appears to permit TDUs to hold the REP in default or subject the REP to late payment penalties following resolution of an invoice dispute in the TDU's favor, which would result in a "loser pays" provision that does not belong in the tariff.

Commission response

The commission agrees that making this suggested change could result in a REP being subject to a late penalty or a default if the dispute is not resolved in its favor. This would likely have the result of fewer invoice disputes, as REPs would likely not want to take the chance of being in default in order to dispute an invoice. While the commission does not want to encourage frivolous disputes, it also does not want to discourage REPs

from filing disputes when they have been wrongfully invoiced. The commission declines to make the change suggested by the TDUs. However, the commission notes that the REP does not get additional time to pay if the dispute is not resolved in its favor. In order to avoid penalties under the tariff, payment should be made promptly (within one Business Day) upon the resolution of the dispute. The commission amends Section 4.4.8 to include effectuating language.

Section 4.4.6 Delinquent Payments

The TDUs suggested the term validated invoice be changed to the defined term "Valid Invoice."

Commission response

The commission agrees to this change.

Section 4.4.8 Invoice Disputes

Joint TDUs recommended that the 20 Business Day period for initiating dispute resolution procedures be reduced to 10 Business Days so that the resolution can be handled expeditiously. The REP Coalition opposed this suggestion due to the importance of ensuring accurate billing. The REP Coalition stated that REPs extensively review TDU invoices and this requires a considerable amount of time. The REP Coalition noted that the timeline to initiate the dispute does not directly impact the expediency of the TDU's investigation.

Commission response

The commission believes that 20 Business Days is a reasonable time to discover an error and initiate a dispute. Therefore the commission does not agree to change the rule as the TDUs proposed.

Section 4.5 Security Deposits and Creditworthiness

Joint TDUs stated that all participants in the market are allowed to collect upfront security deposits as a condition of doing business: ERCOT charges QSEs, energy suppliers require up-front deposits from REPs, and REPs require deposits from customers. Therefore, the TDUs concluded that they are the only party left unprotected. Joint TDUs stated that the showing of minimum financial wherewithal required by the REP certification rule does not protect the TDU. Joint TDUs stated that despite multiple REP bankruptcies and departures from the market leaving unpaid TDU bills, the TDUs have collected no funds allegedly available under the REP certification rule. Therefore, they proposed that the tariff be amended to allow the TDU to collect security deposits from REPs as a condition of doing business, with the implementation of this requirement delayed until the REP certification rule is amended to allow them to do so. In the alternative, language should be added to the tariff removing the barrier in the existing tariff that would prevent collection of a deposit in case a decision was made during reconsideration of the REP certification rule to provide for such deposits. That way, the tariff would not have to be reopened to remove the barrier if a decision were made to allow deposits in another proceeding. Finally, the TDUs noted that there may be other mechanisms used separately or in conjunction with a security requirement that could meet the goal of not having the TDUs unprotected in the event of a REP default. For example, the TDUs suggested a rider might be approved that would let the TDUs collect a bad debt expense arising from REP defaults.

Commission response

The commission agrees with the TDUs that this tariff should not prohibit the TDUs from collecting a deposit if the commission decides in the future to allow for the TDU to collect deposits. Therefore, the commission agrees to insert the TDU's proposed language that may allow for deposits in the future if §25.107 is amended to allow that option. However, the commission finds that the tariff is not the appropriate place to require REPs to provide security deposits, and declines to include such language as requested by the TDUs.

The REP Coalition supported the addition of language to specify the methodology for determining the deposit amount necessary to provide security for the payment of transition charges since each TDU has its own approach and the REP is unable, in many instances, to duplicate the calculation to verify its accuracy.

Joint TDUs strongly urged that the changes related to transition charges (TCs) be rejected as the changes attempt to change the requirements in the financing orders. Joint TDUs stated that changes proposed in the first paragraph would ignore parts of the financing order that state that notice must be given by REPs to Retail Customers. The proposed change in the second paragraph detailing how the TC charge is to be calculated could result in deposits being far smaller than intended under the financing orders. Joint TDUs state that this would be a material change that could be viewed negatively by bond rating agencies. Joint TDUs urged the commission not to take any action that would violate the irrevocable nature of a financing order, thereby ensuring the continued viability of the existing bonds and the rating agencies' views of subsequent bonds to be issued. Joint TDUs pointed out that §25.108(d)(11)(B) provides that the commission may impose standards that are different from the financing order "only where the commission received prior written confirmation from each rating agency that rated the transition bonds authorized by that financing order that the proposed modifications will not cause a suspension, withdrawal or downgrade of ratings on the transition bonds." Joint TDUs stated that since there has been no determination that the proposed changes are among those that could be changed, and that the rating agencies have not been requested to assess the impact of the changes, and that §25.108(d)(11)(A) states that REP standards in the financing order take precedence over REP standards in a commission rule, unless the standards in the financing order have been modified, then the changes in the tariff would not be effective.

Commission response

The commission agrees that the integrity of the ratings on the transition bonds should be protected and at this time chooses not to introduce additional regulatory risk by making changes that could degrade the ratings of the bonds. However, the commission recognizes that there is a problem for the REPs as they cannot check to ensure that they are paying a fair deposit. Therefore, the commission finds that the TDUs need to be able to explain their calculation of deposit amounts in a way that the REP can recalculate its own deposit to ensure that it is being charged fairly.

Section 4.5.1.3 Form of Deposit

Joint TDUs stated that one of the ways a REP can meet the proposed security requirements is to have an investment grade bond rating. The TDUs suggested that the rule be modified to state, "if the credit rating of the provider of the surety bond, affiliate guarantee, or letter of credit or the REP is downgraded below the BBB- or Baa3 (or equivalent) the REP must provide a

deposit in accordance with this tariff within ten Business Days of the downgrade."

Commission response

The commission disagrees that the change proposed by the TDUs is necessary because this section requires a REP to post a deposit of a surety bond, affiliate guarantee, letter of credit, cash or cash equivalent and it requires that the providers of the surety bond, affiliate guarantee or letter of credit meet the requirements of BBB- or Baa3. To the extent a REP has provided one of these itself, it is required to meet these credit requirements according to the proposed language. Therefore the change proposed by the TDU is not necessary. If it has relied on another entity to provide the affiliate guarantee, surety bond or letter of credit, then that entity, not the REP is required to meet these requirements.

Section 4.5.2 Credit Reporting

The REP Coalition supported the proposal to promptly correct any erroneously reported information to the national credit bureaus as the language largely mirrors the existing requirements for REPs in §25.481(c)(3). TDUs suggested eliminating this requirement as there are no national credit bureaus that maintain credit information on businesses (including REPs).

Commission response

The commission is not aware of any credit bureaus for businesses and therefore removes the requirement.

Section 4.6.1 Competitive Retailer Default

The REP Coalition disagreed with the proposed revision to Section 4.6.1 (3) because it implies that if a REP is no longer certified as a REP it is automatically in default with the TDU, which may not be the case. Joint TDUs disagreed and stated that the tariff has always provided that if a REP loses its certification, it is in default and this is the correct result. A REP that is not certified should not be allowed to take service under the tariff and the tariff correctly reflects that default can occur not just as a result of failure to make payments, but also for failing to abide by the tariff or failing to maintain its certification.

Commission response

The commission agrees with the Joint TDUs and declines to make the changes proposed by the REP Coalition.

Section 4.6.2.1 Default Related to Failure to Remit Payment or Maintain Required Security

The REP Coalition agreed with the replacement of the term "lock box" with "dedicated account" provided that it is clear that a dedicated account allows for the current types of electronic transfer of funds available with the lock box controlled by the TDU. Joint TDUs stated that it is their understanding that any bank account accepts electronic transfers.

Commission response

The commission agrees with the REPs that the term "dedicated account" is an appropriate description and makes no amendments to the language as proposed.

Joint TDUs suggested that Competitive Retailer be substituted for "REP" in Section 4.6.2.1(5)(B).

Commission response

The commission agrees that this change is helpful as it includes an opt-in entity as a possible entity for the defaulting REP to transfer the customers to if the opt-in was willing to serve the customers.

The REP Coalition suggested adding language to clarify that Section 4.6.2.1(5)(A) applies to Retail Customers of the REP in default.

Commission response

The commission agrees and makes the proposed changes to the tariff.

Section 4.6.2.3 Default Related to De-Certification

Joint TDUs stated that the commission should never allow a REP that has lost its certificate to retain its customers. If the commission wants a REP to continue to provide service, its certificate should not be terminated and if the commission is desirous of having flexibility to transfer customers to another REP rather than the POLR, the rule should state that the customers will be transferred to another REP.

Commission response

The rule does not specifically address the transfer of a REP's customers if the REP is decertified, but simply refers to §25.107, which suggests that this issue would be resolved in a decertification proceeding. The commission finds that this matter should be determined in connection with a decertification rather than the tariff and declines to make the amendment suggested by the TDUs.

Section 4.7.1 Measurement

Joint TDUs recommended that certain changes in terminology in this section introduced uncertainty and that the original language be used. Joint TDUs preferred that the original language be adopted, permitting charges to be based on calculations from measurements from Meters or estimation or as calculated for tampering.

Joint TDUs recommended the phrase "unless otherwise determined by the commission" in the first paragraph be deleted because pursuant to legislation residential customers are not eligible for competitive metering and the commission does not have the authority to order otherwise.

Commission response

The commission declines to make this change as its proposed language does not give the commission authority it does not possess. Legislative changes on competitive metering have previously been enacted and could be enacted again, and the proposed language will save resources by obviating the need to change the tariff in the future if the law changes.

Joint TDUs requested that it be clarified that unless an Interval Data Recorder (IDR) customer chooses a meter owner that the meter shall be owned by the TDU.

Commission response

The commission agrees and changes the tariff accordingly.

Section 4.7.2 Meter Reading Schedule

The REP Coalition argued that the language of "meter reading schedule" and "scheduled meter reading date" could be confusing or interpreted differently among TDUs. The REP Coalition recommended the use of "scheduled meter reading date." Joint TDUs did not oppose using the term "scheduled meter reading date." Joint TDUs recommended changing the reference from herein to Applicable Legal Authorities. Joint TDUs also recom-

mended that the obligation to provide the meter reading to the registration agent be based on actual meter read date or scheduled meter read date whichever is later.

Commission response

The TDU has the responsibility to read the meter in a timely, predictable manner so that the REPs can bill customers in a timely manner and customers with access issues know when to expect the TDU. Therefore, the commission has added a definition for meter reading schedule that contains the requirement of the TDU to read the meter within two days of the scheduled meter read date.

The commission disagrees with the TDU proposed change to change "herein" to Applicable Legal Authorities. The commission also disagrees that "whichever is later" is an appropriate timeframe. The TDU must read the meter or send an estimate within two days of the scheduled meter read date.

Joint TDUs recommended that the phrase "Company shall provide the reason for the estimation and the estimation method used" be deleted. The requirements should be stated in Section 4.8.1.4 where the focus is on the provision of data rather than meter reading as is the focus of this section. In addition, the Joint TDUs did not think that they should be required to explain the method of estimation on the transaction.

Commission response

The commission agrees to move the requirement to provide the reason for estimation to Section 4.8.1.4. The commission also agrees that the transaction is not the best place to detail the exact method of estimation. If a REP has a question about the method of estimation it is free to contact the TDU for an individual explanation.

Joint TDUs reported that the percentage of estimated meter readings in the ERCOT market is very small. TDUs reported that 35,876,722 meter readings were performed by the TDUs during the first half of 2005, only 0.61% of which were estimated. Of the estimated reads, approximately 44% were the result of the Retail Customer's failure to provide the TDU with access to the meter as a result of locked gates, barbed wire, animals, etc. Joint TDUs agreed that the process proposed in the published rule could result in the resolution of some access problems and a corresponding reduction in the need to estimate. However, Joint TDUs stated that the extremely small proportion of estimated meter reads, combined with the likelihood that the proposed access resolution process will further reduce the number of estimates, means that the commission should carefully consider costs and administrative burdens prior to adopting a complex and cumbersome reporting and enforcement mechanism regarding estimates. In addition, Joint TDUs argued, the commission should consider whether a proposed enforcement mechanism has the potential for increasing, rather than reducing customer complaints.

Additionally, Joint TDUs recommended that a distinction be made between estimates that are the result of denial of access to the meter and estimates that are made for other reasons. When an estimate is not caused by an access issue, and therefore, not caused by the Retail Customer, a three month limit on consecutive estimates may be appropriate. In such instances, the TDU should be able to read the meter and chronic failure to perform the task should be subject to a reasonable performance standard. However, Joint TDUs stated that the limit should only be applied to consecutive estimates because when estimates are not consecutive, there are no large amounts to be corrected once an actual read is obtained. In these circumstances, one of the major reasons for limiting estimates is not applicable. In addition, Joint TDUs stated, record keeping for tracking non-consecutive estimates would have to be done for each customer and each Premises and would be particularly difficult and expensive. Finally, Joint TDUs stated, that the requirement that the TDU use reasonable diligence and comply with Good Utility Practice can be relied on for enforcement in the unlikely event that a TDU is perceived to be abusing estimates on a non-consecutive basis.

Commission response

The commission does not agree that it should focus solely on resolving the access problem, because the commission does not believe that access issues are the only problem. The commission notes that the TDUs have represented that 0.61% of meter reads are estimated and that this is not a high number. However, if that is an accurate percentage, it translates into approximately 219,000 estimations in the first half of 2005, only 96,000 of which were because of the apparent fault of the customer. Even under the assumption that many of these estimations are consecutive for a number of months on one meter, these estimations can result in thousands of unhappy customers to whom the REPs and commission's Customer Protection Division must respond. Additionally, the commission regularly receives complaints from customers whose bills have been estimated for multiple months for other issues that the TDU should have taken care of long before they became complaints. Some of these types of complaints stem from meters that aren't functioning and aren't replaced for months, the TDUs inability to locate its own meter for multiple months in a row, or other TDU issues. Therefore, the commission finds that it is appropriate to address the general problem of estimations within the tariff. However, the commission does agree with the TDUs, that estimates resulting from access issues should be treated differently than estimates that are not caused by the Retail Customer's denial of access. The commission also agrees that the requirements should only be applied to consecutive estimates due to the difficulty in tracking non-consecutive estimates, and because the requirement that the TDU use reasonable diligence and comply with Good Utility Practice can be relied on for enforcement in the event that a TDU is determined to be abusing estimates on a non-consecutive basis. Furthermore, the commission finds that it is appropriate to add an exception that estimations performed to help effectuate timely mass transitions should not could towards the limit. The commission amends this section accordingly.

Rather than applying a numeric limit on estimates resulting from access issues, Joint TDUs recommended that the commission focus on the process for resolving the access problem. Joint TDUs stated that the proposed process was a step in the right direction as it appropriately involves the REP at an early stage, the TDU supplies the REP with information about why the estimate was necessary and the REP has the primary responsibility for contacting the Retail Customer to provide information about the access problem and the potential consequences if it is not resolved. TDUs stated that the process will likely be ineffective if it does not provide an incentive the Retail Customer to take action. Joint TDUs reasoned that there is no incentive for the customer to incur the cost of moving the meter, installing a remote meter, moving a gate, building a dog pen, or implementing another solution other than the threat of disconnection. Joint TDUs argued that disconnection is an onerous consequence particularly for a customer who has been paying the bill and is likely to result in a

vigorous complaint. Additionally, Joint TDUs argued that it may not be possible to disconnect the customer if there is no access to the meter as the Retail Customer's cooperation is required in order to implement any of the proposed fixes. To provide an incentive to the Retail Customer to resolve the access issue, as well as recover the costs incurred by the TDU in attempting to resolve it, the Joint TDUs proposed that an Inaccessible Meter fee be charged to the REP monthly, if after receiving notice and having been given an opportunity to correct the problem, the customer fails to implement a solution. This charge, proposed as one of the Standard Discretionary charges, would be different for residential and commercial customers, the TDUs proposed. Joint TDUs stated that access issues are not the fault of the TDU and the TDU should be allowed to continue to estimate until the access issue is resolved. Joint TDUs stated that the TDU is required to provide a meter read either actual or estimated, so that the REP can bill its customer and so that the wholesale market can be settled. If a limit on allowed estimation results in the failure to provide a reading, the market will have to deal with Unaccounted For Energy and REPs will not have the information needed to bill their customers. Finally, if the commission deems it necessary to adopt a limit on the number of estimates resulting from access issues, at least six consecutive estimates should be allowed in the hope that resolution will have occurred prior to that time.

Commission response

Estimated meter readings are a problem for REPs and for Retail Customers. The commission agrees that the problem is more pronounced when the estimates are consecutive, as the customer may receive a very large bill. TDUs do not have the same incentive to read the meter as they had in the past as they simply continue estimating and billing the REP for the charges. While the commission finds that the customers have a duty to provide access to the meter, similarly the TDU has the obligation to install a meter for which it can obtain a reading or require the customer to provide access. Therefore, the commission solution will allow for differentiation of access issues between cases in which the customer has control and cases that are beyond the customer's control. For issues that are not within the control of the customer such as storms, TDU workload issues, TDU inability to locate the meter, mislabeling of the meter etc., the TDU shall not in any case estimate and bill a meter read more than three consecutive times.

Estimations for access issues that are within the customer's control, such as the customer having a locked facility or a dangerous dog, shall generally follow the provisions in the proposed tariff. A customer who fails to provide access in a given month according to the meter reading schedule will be provided a door hanger by the TDU and will be contacted by the REP. Both of these contacts will list the Retail Customer's options, which are to provide access, to have the meter relocated, have a remotely-read meter installed, or be disconnected. The second consecutive month, the customer will again have the same options. By the third month, the customer will no longer have the option to simply provide access and must elect one of the options that provides a permanent solution. If the customer does not choose, the REP will make the choice on behalf of the customer. If neither party chooses an option the TDU will choose the option to implement. The TDU will have 60 days to implement the solution. The commission believes that this plan will provide proper incentives to the TDU and Customer and requires both the REP and TDU to help the customer understand the seriousness of the situation. For non-residential critical load customers, the TDU may charge a fee and continue estimating until a solution has been implemented. The commission amends this section accordingly.

Due to the amount of work required to effectuate the requirements of Sections 4.7.2.1 and 4.7.2.2, the commission sets an implementation date for these sections of no later than July 1, 2007. However, TDUs and REPs should work towards earlier implementation of these requirements to the extent possible, including increased communication between the TDUs, REPs and customers regarding access issues, the information needs related to those issues, and prompt resolution of the access issues and directs TDUs and REPs to begin working towards the fulfillment of these requirements as soon as reasonably possible. As part of this earlier implementation, each TDSP shall provide to each REP in its service area a spreadsheet listing premises with two or more consecutive estimates resulting from denial of access and the reason for denial.

Joint TDUs stated that the proposed door hanger is unnecessary since the TDUs will have provided the reason for the lack of access to the REP and the customer will have been contacted by the REP. The TDUs predicted that the door hanger would be a time consuming and expensive approach to informing the customer and likely to have little success, as some customers enter through a garage and some types of premises have no front door at all. In apartment complexes, row houses or shopping centers, Company personnel will have to spend significant time finding the correct door. The REP Coalition supported the door hanger and REP notification. However the REP Coalition did not feel that the three options should be presented after three months of access problems rather that the door hanger should also list the options. The TDUs argued that the REP's proposed requirements for the door hanger are better directed toward the information supplied by the REP. Additionally, the TDUs noted that the REP should not wait three months before informing its customer of its options for resolving an access issue.

Commission response

The commission believes that the door hanger is an important part of the notification of the customer of an access problem. Certainly some customers may not receive it, but many will and will be able to rectify the problem. The commission does understand that in some non-residential facilities there is no door. Where there is no door, the TDU can leave the door hanger at a point of ingress. If none is available, the TDU may choose not to leave the notification at the scene and must notify the REP of the inability to leave the door hanger. The commission finds that the door hanger should clearly communicate the customer's options, and that this, and communication between the REP and the customer, also clearly communicating the customer's options, will each play an essential role in ensuring the customer is notified at least once each month, and in most cases twice each month, that action is required. The commission believes that this combination will prove the best way to ensure that the customer understands the importance of taking action, and being prepared to make a choice by the third month if the problem has not been resolved.

Joint TDUs recommended that the cost of installing a remote meter or moving the meter as well as the inaccessible meter charge be billed to the REP rather than directly to the Retail Customer. They stated that installation of a remote meter is currently billed to the REP and there is no rationale for treating this discretionary service differently than other non-construction Discretionary Services. Joint TDUs reported that the TDU does not have the billing information automated in its system so it will not be able to pro-

duce an automated bill. The REP Coalition did not feel that the relocation of the meter was a viable option due to high costs involved with a relocation and that it will always be more cost effective to pay for the installation of a remotely read meter than to pay the cost for an electrician to rewire the building and the TDU to install a new service to accommodate a new meter location. The REP Coalition did not believe that an option with significantly higher costs should be presented as a reasonable option and stated that it should be deleted. Joint TDUs disagreed with the proposal of deleting the option of moving the meter, as more options are better, and this may be the only option that permanently solves the problem.

Commission response

The commission agrees with the TDUs that the installation of a meter should be billed as any other discretionary service charge, and amends that tariff accordingly. The commission also agrees with the TDUs that it is better to present to a customer with more options and declines to amend the rule to remove this option.

The REP Coalition proposed that after three months of denial of access to read the meter in a calendar year or after three consecutive months of denial of access, the TDU should disconnect service to the Retail Customer. Joint TDUs strongly disagreed with this proposal and stated that it is a curious departure from the REP Coalition's claimed desire for a positive customer experience. TDUs argued that even though REPs do not discuss their reason for recommending this change, it appears that they prefer disconnection over helping to work out a solution or incurring any expense or charge associated with resolving the access problem, even though they can bill the customer for the charges. This places the responsibility for choosing or ordering disconnection solely on the TDU perhaps to avoid responsibility for the customer's likely displeasure and complaints and the charges for the disconnection or reconnection. The Joint TDUs argued that the REP Coalition proposal ignores the fact that in many cases disconnection can not occur if the TDU cannot access the meter. Joint TDUs concluded that disconnection is the least effective, harshest tool available for resolving access issues and in many cases is not an available option anyway. Access issues need to be resolved by the REP working with the TDU and the customer. In the TDUs' view, there should not be an automatic three month limit on permissible estimates, and disconnection should only be used as a last resort.

Commission response

In the Texas retail electric market, the REP is responsible for power costs incurred to serve a customer, so the REP should have the ability to have the service disconnected, if the customer does not cooperate adequately in resolving access problems. Therefore, the commission believes that the tariff should include a disconnection option after three consecutive months of inability to obtain access. The commission does not believe that three instances of inability to obtain access within a year is sufficient basis for disconnection. The inaccuracy of an estimate in one month will be corrected by obtaining an actual meter reading in a subsequent month.

The REP Coalition stated that since the customer could switch REPs at any time during the three month process, the process should be coordinated by the TDUs since the new REP won't know if it is the first, second or third time the meter has been estimated.

Commission response

The commission agrees that this is an issue and one that should be worked out in the stakeholder process. One remedy for this might be to have the transaction indicate the number of consecutive estimates for denial of access. This would allow any new REP to have access to that information. In any case, ERCOT or the TDU will need to record the estimates, however that is transmitted to the REP.

Joint TDUs recommend changes to the tariff to make clear that the Company has the right to disconnect the Retail Customer for failure to provide access to the meter or other company equipment.

Commission response

The commission has indicated that one of the options to remedy the repeated failure to provide access to the Meter is disconnection. The tariff specifies in Sections 4.3.10, and 5.3.7.2, that the TDU may suspend Delivery Service to the Retail Customer for the failure to provide the TDU with reasonable access to Company's facilities located on Retail Customer's Premises after a reasonable opportunity has been provided to remedy the situation. The commission does not see a need to add other changes as proposed by the TDUs.

Joint TDUs recommended that the proposed change to high/low validation process refer to Company's internal validation process since the terminology more accurately describes the entire process of which the high/low evaluation is only one part. The REP Coalition agreed that a meter read that fails the validation process one time does not necessarily indicate that there is a problem with the meter reading. The REP Coalition stated that it is also possible that the meter reading might fail only one level of the validation screening process but not the entire process. The REP Coalition recommended that the TDU not be required to automatically re-read the meter for a one time fail of the validation process. However, if a meter reading fails the validation process in consecutive months, the REP Coalition believed that the TDU should be required to perform a re-read of the meter. Joint TDUs argued that even when there are consecutive evaluations, the readings may not "fail" validation and a re-reading may not be required. Whether a re-read should be required must be determined by the TDU on the basis of an evaluation process, not on some mechanical application of whether evaluation has occurred more than once.

Commission response

It is very important that the REPs receive timely and accurate meter readings in order to bill customers. There are too many instances where meter readings are being sent with zero usage or very high usages. This leaves the REP unable to bill its customer either on time or accurately. This is not acceptable for the retail market therefore, the commission agrees to change "hi/low validation" to "the validation" and details that the company should implement a validation procedure that prevents zero or very high readings unless the company has reason to believe that is correct and can provide that reason to the REP.

ERCOT stated that currently it does not perform a comparison of a scheduled meter reading date to the actual meter reading date. ERCOT reported that it also does not report on the number of annual or consecutive occurrences of estimated meter readings sent by the TDU or on the receipt timeliness of the 867_03 (Monthly usage) transactions in accordance with the assigned TDU meter reading schedule. ERCOT stated that any new requirements for ERCOT related to these functions would entail the need for system and business process changes at ERCOT.

Commission response

The commission expects that many changes will be needed to systems and processes for both ERCOT and market participants in order to implement these new terms and conditions not limited to the changes ERCOT mentions here. The commission will leave this to the stakeholder process.

Joint TDUs also proposed changes to reflect that IDRs should not be subject to limitations on the number of allowed estimates as an "estimate" is performed to fill in minor gaps in data transmitted by an IDR and there may be multiple gaps in a day, if each one of the instances is treated as a separate estimate, an numeric limit on estimates is likely to be violated for each premise with an IDR.

Commission response

The commission agrees and makes changes to the rule to reflect this.

Section 4.7.4 Meter Testing

Joint TDUs stated that they believe that consistent with PURA §38.052(a)(1) a free meter test should be based on whether the meter test has been performed in the previous four years, not on whether the customer has requested a test in the previous four years.

Commission response

The commission believes that PURA §38.052(a)(1), which states "a consumer may have a meter or other measuring device tested by an electric utility once without charge..." provides the commission latitude to interpret and to apply consistent with the statute and with customer's expectations. The commission interprets this to imply that it is the customer's request that triggers the TDU to perform the free test, not the TDU testing the meter on its own accord or for a prior customer. Therefore, the commission declines to make the requested change.

Joint TDUs suggested that the requirement that the company report who performed the test and where it was performed should be conditioned with the words "upon request" or the information will require a system changes and a TX SET change so that the information can be carried on an electronic transaction. Joint TDUs believe that if it is done, the only type of information that would be made available on the electronic transaction would be whether the test was performed by the Company or contractor and whether it was performed in the field or laboratory. It is unclear what value this information would have. Joint TDUs stated that they currently make this information and more available upon request and that is their preferred approach.

Commission response

The commission disagrees with the Joint TDUs that the only information that would be provided would be whether the test was performed by the Company or contractor and whether it was performed in the field or laboratory. The comment field for the transaction carries over 4000 characters and the commission believes that the TDUs could report more information on the transaction than is reported above. The Joint TDUs should be able to provide basic information on the transaction such as whether the meter was within tolerance or not within tolerance, date and place the test was performed and if the customer or REP would like more detailed information, they can contact the TDU directly and the TDU shall provide that information directly to the REP or customer without charge. Therefore, the commission makes changes to the tariff to allow additional information to be provided to the customer upon request at no additional charge.

The REP Coalition supported the clarifying amendments requiring the TDU completion of requested meter tests within 10 Business Days for self-contained meters and no more than 30 calendar days for other types of meters. The REP Coalition recommended that the commission add a requirement to communicate the results of the tests back to the REP or customer within this timeframe as well to ensure that the process is closed with the customer. Joint TDUs argued that this would shorten the already-tight time allowed for testing and should not be adopted.

Commission response

The commission agrees with the REPs that the test report should be received within the timeframe specified within the tariff. This should not be burdensome because the TDU has already performed the test within the timeframe, and it only needs to send the results. The commission adopts changes to the tariff to reflect this.

Consumer Commenters stated that when a customer questions the accuracy of its meter, the TDU sends its field personnel to conduct a test, and that the customer is not given the option of having the test conducted by someone independent of the TDU. Consumers argued that the system of self-policing meter accuracy should be changed. They suggested that if the TDU is unable to provide the customer with a satisfactory explanation and propose a solution to what the customer perceives as inaccurate billing, the customer should be able to hire an independent company to test the meter and if the independent test finds that the customer was right, the TDU should be required to pay the costs of the tests and reimburse the customer any estimated over charges because of the metering problem. The TDUs disagreed and stated that testing is regulated by ANSI standards which fully protect the Retail Customer. Because there is no evidence that TDUs are improperly performing meter tests, or reporting inaccurate or false results, better education by REPs is required to help Retail Customers understand why their bills are high, rather than having outside contractors perform meter tests.

Commission response

The commission agrees with the TDUs that meter testing is required to be done within a set of standards established by an independent standards board, ANSI. The commission requires these standards be followed by TDUs. The "Independent" companies that Consumers propose should test the meters are not regulated by anyone. Further, the commission is not aware of any certification standards or organization in place to insure that meter tests would be properly conducted. Therefore, the commission does not make changes to the tariff to implement the Consumer's suggestions.

Section 4.7.5 Invoice Adjustment Due to Meter Inaccuracy

TDUs recommended that the term application of interest be deleted because it is not applicable. The REP Coalition recommended that the commission delete the requirement that proper correction be made of previous measurement data readings in order to work with the new language proposed by the commission.

Commission response

The commission declines to make the changes recommended by the TDUs because it believes that interest should be paid in situations where the meter is inaccurate because that is an error.

To eliminate any confusion, the commission adds an additional provision in Section 4.4.3 for meter inaccuracy as an error that must be corrected and on which interest must be paid.

Section 4.8 Data Exchange

Joint TDUs commented that language should be added to reflect current practice, which is that charges apply to a request for historic data older than the most recent 12 months.

Commission response

The commission agrees that charges are applicable if a request is made for data older than 12 months and makes the suggested changes to the tariff.

Section 4.8.1 Data from Meter Reading

The REP Coalition stated that the current language restricts the TDU from providing a customer's PIN number for on-line access to anyone other than the customer. The REP Coalition expressed the belief that it is important for a non-residential customer to have the ability to give the TDU permission to release the customer's PIN number to the REP and to alleviate security concerns, the TDUs should have expiring PIN numbers. Joint TDUs stated that it is a simple matter for the customer to provide the PIN number to the REP if the customer wants the REP to have access. Additionally, it allows the Retail Customer who is the owner of the data to remain in control of access to the data. Joint TDUs expressed concern that if a REP were allowed to obtain the PIN from the TDU, the TDU could be liable for inappropriately or incorrectly releasing the PIN. Therefore, the TDU would have to insist upon verifiable authorization from the Retail Customer before releasing the PIN to the REP and this would put the TDU in the position of having to receive, review and retain the authorization and invent a system for making PIN numbers expire on a variety of dates to coincide with the customer's request.

Commission response

The commission agrees with the Joint TDUs that it is easier for the customer to give its PIN to whomever it wants to have use of the PIN. The commission is not convinced that the current system requires fixing, particularly if it would require the TDUs to create a complicated system to keep track of customer authorizations and PIN numbers when the customer has the ability to do it.

Joint TDUs did not support the requirement to provide congestion management zone and loss designation codes on the TDU's web portal. Joint TDUs explained that this has been considered to be competitively sensitive information and is sent to the REP of Record only. Joint TDUs also argued that this is being reconsidered in Protocol Revision Request 312 which is currently pending before ERCOT and any change to a nodal market would also require further consideration. In addition, because the requirement is for the TDU to provide congestion management zone and loss designation codes if ERCOT doesn't, there will not be enough time for the TDU to implement the changes by the time this tariff is to take effect. Joint TDUs stated that as currently written, the reference to Applicable Legal Authorities correctly reflects that other requirements that will govern how information is made available.

Commission response

The commission agrees with the TDUs that there may not be enough time to implement this before this tariff goes into effect. The commission also did not see any comment filed to support this proposal. Therefore, the commission agrees that this change should continue in the stakeholder process and move forward on that timeline, and amends the proposed rule to remove this requirement.

Joint TDUs stated that the obligation to provide historical usage within three days should be conditioned on receipt of the request and the obligation to maintain data should refer to data for "Premises" and not "Customer."

Commission response

The commission agrees that the obligation is based on the "receipt." The commission also agrees that this information is captured based on Premises and that is consistent with the commission's Customer Protection Rules. Therefore, the commission adopts the Joint TDUs' suggested changes to this part of the tariff.

Additionally, Joint TDUs stated that not all TDUs could provide access to load data for non-residential customers through a web portal by June 2006 as system changes are required for some TDUs that will take more than the allotted time to complete.

Commission response

The commission finds that TDUs already have the requirement to provide this data to advanced metered customers and does not believe that these changes should be difficult for the TDU to implement in a timely fashion. Therefore the commission makes no change to the tariff.

Section 4.8.1.1 Data Related to Interval Meters

Joint TDUs commented that the term "applicable market rules" should be changed to "applicable legal authorities."

Commission response

The commission agrees and makes the changes to the tariff as suggested by the TDUs.

Section 4.8.1.2 Data Reported by Volumetric (kWh) Meters

Joint TDUs asked that the requirement to include time for meters other than IDR be deleted as only IDR meters contain time information.

Commission response

The commission finds that the TDU should know when it read the meter both at the end of the last period/start of the current period and the end of current period (current reading). However, the commission did not receive comments stating that this was important the market, so the commission amends the tariff as the TDUs requested.

Section 4.8.1.3 Out of Cycle Meter Reads

Joint TDUs suggested changes to ensure correct and consistent use of terminology such as "out of cycle switch" and "out of cycle meter read."

The REP Coalition urged better definition of the timeframe for a TDU to complete a request for meter re-reads. The REP Coalition argued that the TDUs should be required to submit the meter re-read information within five Business Days of the requested date because usage and billing disputes are the most common customer complaints. Joint TDUs responded that the solution to these problems and complaints is customer education, not speeding up meter reading. Joint TDUs stated that the number of Meter re-reads requested has skyrocketed since deregulation and tends to peak during high-usage summer months or after

REP rate increases indicating a failure on the part of some REPs to properly manage customer expectations surrounding these issues. If timelines are to be included, Joint TDUs stated that they are properly placed in Chapter 6 rather than in this section as proposed by the REP Coalition.

Commission response

The commission determines that correct meter readings are vital to the Competitive market. Without timely and accurate meter reading information, a REP cannot issue a timely or accurate bill. Currently, some REPs receive meter readings that contain zero usage for a known active meter or usage is reported that leaves a residential customer with a bill in the tens of thousands of dollars. The commission has required that the TDU establish a validation system that should eliminate these types of meter readings from being sent to the REP. That will likely reduce the amount of meter re-reads requested by REP. Therefore, the commission determines that the TDU should perform and report meter re-reads within five days of the requested date, and amends this section accordingly. The commission disagrees with the TDUs that the timeline should be in Chapter 6 and declines to move this requirement to Chapter 6 for a later implementation date.

The REP Coalition stated that not all TDUs take the next step of cancelling and rebilling invoices that result when a re-read indicates the monthly meter read was in error.

Commission response

The commission determines that TDUs should promptly send a corrected invoice and meter reading transaction when a meter re-read indicates that the monthly meter reading was in error.

ERCOT pointed out that this section requires that beginning and ending meter reading dates provided to both REPs match, in the case of a switch. ERCOT stated, that it does not currently report on whether the beginning and ending meter reading dates provided to both REPs match and that adding such requirements would entail the need for system and business process changes at ERCOT.

Commission response

The commission determines that TDUs' systems should be programmed in such a way that the meter read for each retailer would not overlap. The commission has taken ERCOT's comments into consideration and finds that there may be more costs than benefits associated with this proposed change. Therefore the commission agrees to remove the requirement that meter reading dates should match.

Section 4.8.1.4 Estimated Usage

The REP Coalition supported the language affirming than an estimate shall not equal zero for a known active meter. Joint TDUs recommended that language be added to make clear that an estimate of zero or an estimate that is more than double the prior month's actual usage is permitted only when there is a valid reason for the estimate. There are instances in which the actual Meter Read for an active meter is zero and for such meters, zero is also an appropriate estimate, the same is true for meter readings that are more than double the previous actual meter reading.

Commission response

The commission concludes that there may be instances when an actual Meter Read for an active meter would be zero such as seasonal businesses or hunting cabins and therefore an estimated meter reading would also be zero. Similarly, meter readings that are more than double the previous actual meter readings may be correct. However, the commission believes that TDUs should have estimation methods that differentiate between unusual readings that are likely to be correct and readings that are likely incorrect. Similarly, these estimates should not be done without careful thought from the TDU and the TDU should be able to provide its reason for the estimation upon request.

Joint TDUs stated that the method for performing an estimate should not be provided on the invoice because all TDUs use industry accepted, nationally recognized procedures for estimating, providing enough detail on the transaction to adequately describe the procedure would be impossible and codes would not be sufficient if developed and the REP would still not be able to replicate the estimate. Joint TDUs suggested that the REPs call the TDU to request an explanation regarding a particular estimate if more detail is needed.

Commission response

The commission determines that the TDU should provide an explanation regarding a particular estimate upon request. The commission determines that this does not require a change to the tariff.

The REP Coalition and Suez supported the proposed allocation method for smoothing usage over the entire estimation period. Suez stated that this estimation practice leads to unexpected fluctuations in the consumption billed to the customer. Additionally, the customers whose price is dependent on an index of the current market cost of electricity may be paying an amount significantly different per unit of electric energy than they would have if the usage had been properly allocated to the time period in which it was actually consumed.

Joint TDUs argued that the proposed requirement that rebilling be smoothed will cause an increase in the number of cancel/rebills. To decrease the impact, the TDUs recommended a 25% threshold be included in the provision. Joint TDUs clarified that this means that any over or under-estimated usage should be spread over the entire estimation period only if the difference between the corrected total aggregate usage of the periods to be cancelled and rebilled and the estimated total aggregated usage for those same periods is greater than 25% of the estimated total aggregated usage for those periods. In addition, smoothing should not be required when the estimate results from the Retail Customer's failure to provide access. The REP Coalition opposed the TDUs' suggested 25% limitation on corrections and urged the commission to retain the requirement as proposed.

Suez strongly disagreed with the TDU proposal and noted that adding a 25% threshold for rebilling will compromise the integrity of Texas' competitive retail electricity market by placing a contrived barrier on the ability to allocate electric energy consumption accurately. Suez also believed that such a threshold would impact the ability of REPs to satisfy consumers by providing risk-managed products and services designed to create budget certainty and price stability would be impeded. Since risk premiums would be factored into REP's procurement of energy to serve their customers, Suez commented that this might impose an additional financial burden on the REP that they would have no means of managing. Suez provided an example of one customer that received an estimated meter read and then an actual bill. The difference between the two was less than 25% so it would not have been recalculated under the TDU proposal, however the amount of the difference was approximately $23,000.

Suez stated that it does not seem reasonable to penalize a customer by not allowing for the rebilling of erroneous estimated meter readings, if for example, the reason for the meter access issue is out of the hands of the customer such as mislabeling of the meter location by the utility, a problem that currently is reported as a meter access issue.

Commission response

The commission agrees with Suez and the REP Coalition and finds that consecutive estimates should be trued up as soon as possible. The commission finds that when an Actual Meter Reading is taken after two or more consecutive months of estimation, the estimates shall be trued up and smoothed over the entire usage period regardless of the difference between the estimated and actual invoices. Estimates, especially overlapping months where the rates changed can be harmful to the customers. Therefore the commission declines to make the changes suggested by the TDUs.

The REP Coalition recommended a modification that would make it clear that any adjustment made by the TDU to an actual meter read (except for missing IDR intervals) that is used for billing purposes is in fact considered an estimated meter read. The REP Coalition reported that sometimes for various reasons the TDU decide to adjust an actual meter read for billing purposes yet still reports that meter reading as an actual. Joint TDUs strongly disagreed with this recommendation and illustrated instances in which an adjustment is made to an actual reading but no estimate results, such as Power Factor adjustments, meter multipliers, and loss adjustments for Premises metered on the secondary side if the customer is a primary voltage customer. The TDUs stated that if these adjustments were considered estimates then these customers would have estimates every month.

Commission response

The commission understands that sometimes adjustments are made to actual meter readings that should not require a meter reading to be considered an estimated meter reading, such as factoring in a meter multiplier or similar reason. However, the commission determines that outside of these types of examples, TDUs should not alter actual readings and still report them as actual. TDUs shall clearly report all alterations of actual data and be able to clearly document its method of estimation if requested. The commission does not believe that additional changes to the tariff are necessary.

Section 4.8.1.5 Meter/Billing Determinant Changes

Joint TDUs suggested that this section be broken up in to two separate sections; one for meter changes and one for Billing Determinant changes to make clear that the language permitting a change to be effective at the next billing cycle applies to all Billing Determinant changes, not solely to a change in meter and metering equipment.

Commission response

The commission does not believe this change is necessary and declines to make the proposed changes to the tariff.

Section 4.8.2 Data for Unmetered Loads

The REP Coalition recommended that this section be amended to require that for points of delivery that are added or removed from an existing account off cycle that the usage for the account be prorated for each additional point of delivery, as it is not reasonable to require that a customer or REP pay for a full month of service when points of delivery are added at various times during the billing period. Additionally, the REP Coalition felt that in the case of an off-cycle enrollment, the usage values for each account should be prorated. Joint TDUs stated that this section of the existing tariff was not changed and Joint TDUs recommended it remain unchanged. Joint TDUs reported that the most common unmetered loads that are added off-cycle are streetlights. The current procedure is to bill for the number of streetlights that are on the account at the end of the billing cycle. The TDUs noted that although some streetlights will be charged a full month's usage, other streetlights won't be charged at all, so a rough balance exists. Joint TDUs reported that the current charges are low (less than $25 for most types of luminaries that are owned and maintained by the utility and $10 month for customer-owned lights), and the REP proposal is too complicated for what tends to be relatively minor change.

Commission response

The commission agrees with the TDUs that the costs to track this likely do not outweigh the benefits and the current procedure should remain unchanged.

Section 4.8.3 Adjustments to Previously Transmitted Data

The REP Coalition recommended amendments that would address timeframes within which the TDU must make adjustments, requiring the TDU to transmit replacement data within one Business Day of when the original SET transaction is cancelled. TDUs stated that no substantive changes were made to the existing tariff language in this section and these requirements should continue to be handled through the market process, where all adjustments to previously transmitted data are discussed.

Commission response

The commission finds that requiring the TDU to resubmit replacement data within one Business Day of when the data was cancelled is reasonable as the TDU will likely have the corrected data when it cancels the original. Furthermore, the REP will need corrected data as soon as possible because it needs to send a corrected bill to its customer. The commission amends the section accordingly.

Sections 4.9 Dispute Resolution Procedures and 4.10 Service Inquiries

Joint TDUs requested the exclusion of the submission of a "proposed resolution" and requested to change the timeline from the ten Business Days to "as soon as possible". Joint TDUs stated that ten Business Days is not always sufficient time to advance an investigation to the stage where a proposed resolution is available.

Commission response

The commission disagrees with the proposed changes suggested by the Joint TDUs. The TDU has an obligation to investigate and resolve disputes in a reasonable timeframe. The commission notes that completion of the investigation may be important to responding to a complaint at the commission, which will have a short timeframe. The REPs need some certainty from the TDU investigations so that they can close out their complaints. Therefore, there should not be a delay in investigation or proposing a resolution.

The REP Coalition urged a reduction in the number of days for a TDU to respond to informal complaints made with the commission from ten days to five. Joint TDUs replied that five Business

Days would be too restrictive a timeframe to allow complete investigation of many problems.

Commission response

The commission believes that ten Business Days is a reasonable timeframe for response to informal complaints, and makes no changes.

Joint TDUs recommended eliminating all changes to Section 4.9.2, because the changes could be construed as limiting rights available to the TDU and REP elsewhere, for example the right to seek revocation of certification for a REP that defaults on its obligations.

Commission response

The commission agrees that the language is vague and will make the changes suggested by the TDUs.

Section 4.11.1 Notification of Interruptions, Irregularities, and Service Requests

Joint TDUs supported the modification of this section, to make clear that all REPs, including Option 1 REPs, must provide and update general contact information for the Retail Customer. The TDUs stated that "home phone" should be changed to "telephone" because many Retail Customers are businesses rather than homes. Joint TDUs also stated that it would be helpful to state explicitly that the information must be provided via a TX SET transaction designed for this purpose. Joint TDUs also suggested that this requirement would be more appropriately located in Section 4.3.7 and that a reference to that section and its requirements would still be included in this section.

The REP Coalition opposed the addition of a language requirement that REPs provide updated Retail Customer information to the TDU to enable the TDU to verify a Retail Customer's identity regardless of what communication option a REP has chosen, and recommended that the paragraph be deleted. The REP Coalition argued that the TDUs already receive Retail Customer information with every enrollment transaction, Option 2 and 3 REPs send updates to this information on the standard 814_PC transaction, and Option 1 REPs should not be required to provide any additional Retail Customer information to the TDUs. The REP Coalition also opposed similar language further in the section that intimates that the TDU will need updated Retail Customer data to verify a customer's identity, and recommended that this section be revised to reflect current market processes. The Joint TDUs responded that the REPs often provide incomplete or incorrect information on the original enrollment, such as listing "retail customer" or "Mickey Mouse" in place of the customer's name. Joint TDUs commented that very few Option 2 and 3 REPs actually provide updates on the 814_PC, and there is no rationale for excluding Option 1 REPs from providing customer contact information updates. The TDUs argued that the recent difficulties in performing mass transitions have demonstrated the need for the TDU to have correct, updated information on customers, and that this information is needed in order for the TDU to help resolve access issues. The TDUs recommended that the tariff specifically refer to this transaction, or that it be made clear in the Preamble that the commission intends for all REPs to use this transaction to update the customer information.

Commission response

The commission agrees with the TDUs that the TDU may have need for accurate and updated customer information. This will be particularly important in the implementation of the access solution the commission has adopted. The TDU will likely need customer information in some areas to leave door hangers at the proper door or point of ingress. Additionally, the commission is currently evaluating its options for provider of last resort and mass transitions and has proposed that ERCOT be responsible for maintaining customer information, which would likely also require updates from the REP. The commission agrees with the TDUs that this should be done on the appropriate TX SET transaction rather than another method, and that all REPs including Option 1 REPs be required to update customer information to the TDUs. The commission has incorporated these findings into Section 4.3.7.

Section 5.2 Limits on Liability

OPC commented that this provision limits the Company's liability to a Retail Customer, and should also expressly limit the Retail Customer's liability to the Company. Joint TDUs responded that reciprocal provisions are not necessary because the Retail Customer is not exposed to the same type of liability as the TDUs. Joint TDUs stated that no changes should be made in these provisions without studying the potential impact on costs and without careful study of the wording that would be used, and that OPC did not suggest any language to assess.

Commission response

The commission agrees with the Joint TDUs that the Retail Customer is not exposed to the same type of liability as the TDU. The provisions of this tariff are not intended to limit the liability of the parties for damages except as provided in the tariff. It is unclear to the commission what liability the Retail Customer has that OPC proposed to limit, and OPC did not propose language to effectuate its suggestions. Therefore, the commission declines to amend this section.

Section 5.3.1.1 Initiation of Delivery System Service Where Construction Services are not Required

Joint TDUs commented that the last lines of this section should be deleted to make it comparable to Section 4.3.2.1, the parallel provision in Chapter 4, and because the obligations surrounding a move-in are described in the applicable Rate Schedule and should not be repeated here. Joint TDUs also recommended that the reference be to Chapter 6 rather than a particular section of Chapter 6.

Commission response

The commission agrees and amends the section accordingly.

The REP Coalition commented that the time deadline for connection of new service without construction has been removed from Chapter 5 and replaced with a reference to Chapter 6. The REP Coalition reiterated their concern in response to Section 4.3.2.1 and recommended language to modify the specific timeline for connection of service. Joint TDUs responded that the obligations for providing Discretionary Services should be stated in the applicable Rate Schedules in Chapter 6.

Commission response

Consistent, with the commission's response to the comments regarding Section 4.3.2.1, the commission desires to have the changes proposed in this tariff and in Chapter 6 effective as soon as possible but realizes that some of these changes will require TDU system changes as may require TX SET changes as well. However, the commission agrees that the connection of new service without construction will not require such changes and therefore amends this section to include the time deadline.

The commission also makes changes to this section for consistency with Section 4.3.2.1.

Section 5.3.2 Requests for Construction Services

Joint TDUs commented that the proposed new paragraph at the end of this section requires the TDU to contact the designated person within two Business Days of a request for construction service. Joint TDUs believe that a more reasonable timeframe is five Business Days because the TDU personnel responsible for making the initial contact with the Retail Customer necessarily spend a great deal of time completing construction service appointments in the field, and this work may limit the time they have available to make initial contacts. Joint TDUs stated that flexibility to accommodate high volume periods of requests and scheduling is needed to ensure satisfactory customer service. The REP Coalition disagreed and stated that it is unacceptable for a Retail Customer to wait five days to be contacted by the TDU, and that Joint TDUs did not explain why the amount of time personnel spend in the field preclude the personnel from making a phone call.

The REP Coalition stated that the standardization is important for Retail Customer to know when to expect contact from the TDU to initiate discussions on construction service requirements. Joint TDUs responded that putting a timeframe around the TDU's obligation to respond to the Retail Customer regarding a construction service request is unnecessary micromanagement which should not be included in the tariff. Joint TDUs stated that the current practice is to respond to these requests as soon as possible, and Joint TDUs are not aware of any complaints about TDU response times to these requests. Joint TDUs stated that the requests are for very customer specific services for which replies may vary significantly, and the Retail Customer will be in contact with the TDU from the beginning, and the expectation will be communicated by the TDU.

Commission response

The commission agrees with the REP Coalition and declines to amend this language.

Section 5.3.3 Changing of Designated Competitive Retailer

OPC reiterated its arguments from Section 4.3.4 regarding the vagueness of the definition of "Applicable Legal Authorities," and regarding TDU notification to a REP regarding a TDU's determination not to change REP designation with detailed rationale.

Commission response

Consistent with the commission's response to comments regarding Section 4.3.4, the commission does not believe the term Applicable Legal Authorities is confusing and declines to make the suggested change. The commission agrees with Joint TDUs' comments on Section 4.3.4 regarding the need for REP notice. Since the REP should already be aware of its default status, the TDU need not notify the REP of the reason that the switch was rejected.

Sections 5.3.4 Switching Fees and Switchovers and 5.3.5 Identification of the Premise and Selection of Rate Schedules

Joint TDUs stated that for the reasons discussed in their comments on Section 4.3, the proposed language should be modified so that the requirement to reset ratchets will not impact TXU ED until no later than its next general rate case.

Commission response

The commission concludes that it is appropriate for the commission to set policy in rulemakings and finds that the existing policy is problematic for some customers and that changes are necessary. However, the commission understands that TXU ED's current base rates were set based on the assumption that the demand ratchet would not be reset. Therefore, the commission finds it appropriate for the TDU to discontinue this practice no later than the conclusion of its next general rate case and makes changes to the proposed tariff to reflect this.

Joint TDUs recommended that the language be made identical to that inserted in Section 4.3.6. Joint TDUs recommended language rewording the final paragraph to make it clear that the Retail Customer is to notify the REP of factors that could affect the applicability of a Rate Schedule, both before initial selection of the schedule, and if factors subsequently change. Joint TDUs stated that without this rewording, the language is self contradictory, referring to a "known change" that would affect "initial selection."

Commission response

The commission agrees and amends the section accordingly.

ERCOT commented that this subsection requires the TDU to notify the REP and the Independent Organization (ERCOT) of the appropriate load profile, the initial Rate Schedule assignment and any changes or revisions to data associated with an ESI ID, including changes or revisions in the assignment of a Rate Schedule. ERCOT stated that currently the TDU sends Rate Schedule information on a transaction to ERCOT, which ERCOT forwards to the appropriate REP, but ERCOT performs no validation on the accuracy of the Rate Schedule and does not store the Rate Schedule. ERCOT commented that any requirement for ERCOT to perform such validation would require system and business process changes at ERCOT.

Commission response

The proposed amendments to the tariff do not require ERCOT to perform validation of rate schedules.

OPC commented that a residential customer might not reasonably be expected to be aware of a change in the Retail Customer's electrical installation that may affect the applicability of a rate schedule, and suggested language regarding reasonable belief. Joint TDUs disagreed and stated that this change would make the rule ineffectual, and should not be adopted. Joint TDUs stated that Retail Customers must be responsible for informing their REP of factors that could affect their electrical service, because in many instances, neither the REP nor the TDU will otherwise have access to this information.

Commission response

The commission agrees with Joint TDUs that the customer is in the best position to know of changes that may affect the rate schedule and declines to delete this requirement.

The REP Coalition stated that as in the discussion in Chapter 4, the REP Coalition supports the language regarding ESI ID maintenance, with the modifications recommended in Section 4.3.6. Joint TDUs responded that in accordance with their comments on Section 4.3.6, they disagreed with these proposed changes. However, Joint TDUs agreed that the language in Section 5.3.5 should mirror the language of Section 4.3.6.

Commission response

The commission makes modifications to this section to provide for consistency with Section 4.3.6, for the reasons set out in the discussion of that section.

Section 5.3.7.2 Noticed Suspensions not Related to Emergencies or Necessary Interruptions

OPC commented that notice to the Retail Customer, presumably from the REP, is implicitly required in this section to allow for reasonable opportunity to remedy of the situation, and recommended that the rule or adoption preamble clearly state that direct notice to the Retail Customer is required. OPC also noted that subsection (5) is another example where "Applicable Legal Authorities" may be vague in a way that arguably permits suspension under circumstances not anticipated by the commission.

In reply comments, Joint TDUs noted that Staff, Joint TDUs and the REP Coalition did not recommend substantive changes to this section, and it should be approved as shown in the published amendments. Joint TDUs commented that if OPC is proposing that the REP be required to provide notice to the Retail Customer, Joint TDUs do not oppose that because it reflects the current practice. However, if OPC is suggesting the TDUs give notice, then Joint TDUs oppose the recommendation because the market has been designed for the REP to be the sole contact with the Retail Customer for electric service, with few exceptions. Joint TDUs added that the TDUs do not currently have updated contact information for Retail Customers.

In reply comments the REP Coalition stated that the purpose of the section is to require the TDU to provide notice to both the Retail Customer and the Retail Customer's REP under various circumstances.

Commission response

The commission agrees with the Joint TDUs that the tariff should be approved as shown in the published amendments. Chapter 5 of this tariff governs the relationship between the TDU and Retail Customer. Therefore, the commission does not agree to place a requirement on the REP-Retail Customer relationship in this section. In this section, the TDU only has the requirement to notify the REP of the Retail Customer in this section.

Section 5.3.7.4 Prohibited Suspension or Disconnection

Joint TDUs stated that this section of the existing tariff is understood as written by those operating in the market, and could simply be left as is. Joint TDUs stated that any attempt to rewrite it should be done carefully, to avoid misinterpretation. Joint TDUs commented that it is unclear in the published amendments where various requirements fit, and to what they apply. Joint TDUs commented that it is very important that the final paragraph not be read as a subheading under subsection (D), which is not its meaning in the existing tariff.

Joint TDUs commented that if this section is going to be reorganized, each subsection should be written to stand on its own, in order to allow a reader to look a subsection for all of the needed information. Joint TDUs stated, that under this approach, the exception for "dangerous conditions, clearance requests or move out requests" is repeated in the two subsections to which it applies, which are those related to the unavailability of Company personnel to reconnect during extreme weather. Joint TDUs noted that this exception is unnecessary in the other two subsections regarding non-pay, and therefore this exception is not needed.

Joint TDUs stated that the final paragraph should be denoted as a separate subsection (E), which will make clear that it is not a part of subsection (D), which is how it could be construed under the rule amendments as published.

Commission response

The commission agrees with the TDUs that it is important that (2) not be read as a subheading under (D) and agrees that it is more appropriately placed under (E). The commission makes changes to clarify the section.

Section 5.3.8 Disconnection of Service to Retail Customer's Facilities

Joint TDUs stated that the title of this section should be changed to reflect the fact that the content now deals with "reconnection" as well as "disconnection." Joint TDUs stated that the language detailing the specifics of the service should be deleted, because they are contained in Chapter 6 and this section should merely reference Chapter 6. Joint TDUs also suggested reordering of words in the second paragraph for clearer meaning. Joint TDUs removed "or reconnection" from before "non-payment" and suggested "or reconnection thereafter" be placed after "Retail Customer."

Commission response

The commission agrees with Joint TDUs and amends the section accordingly.

Section 5.4.8 Access to Retail Customer's Premises

The REP Coalition recommended that In Writing be capitalized. Joint TDUs stated that this was not necessary.

Commission response

"In writing" is not a defined term, and therefore it is not appropriate for the term to be capitalized.

OPC argued that the last sentence may preclude access to a non-company owned meter by the owner of the meter. However, Joint TDUs pointed out that this was considered during the rulemaking on Competitive Metering and Sections 5.10.2 and 5.10.5 already provide customers with the necessary rights associated with non-Company-owned Meters.

Commission response

The commission notes that the sentence to which OPC refers is referring to access to Company's facilities, and is not referring to facilities or equipment that are not owned by Company. The commission agrees with TDUs that matters relating to non-Company-owned Meters are addressed in Section 5.10, and therefore declines to make changes to this section.

Section 5.5.4 Change in Retail Customer's Electric Load

OPC suggested adding a requirement that the customer be noticed of the maximum capacity of the Delivery System facilities serving a Retail Customer before any penalty would apply for damage to Company's facilities from use of delivery system in excess of such maximum. Joint TDUs disagreed and stated that the purpose of this section was to ensure that the Retail Customer tells the TDU prior to making significant increases in load or demand and at that time, the TDU will tell the customer whether the facilities are sufficient to handle the increase. The TDUs argued that OPC's suggestion would turn this requirement on its head, and would require the TDU to continually update all customers of the capability of the Delivery System used to serve them and that adding that this could potentially be interpreted as

affecting the careful balance of liability for various issues contained in the tariff.

Commission response

The commission agrees with the TDUs and that to continually update all customers of the capability of the Delivery System used to serve them would not be practical. The commission disagrees with OPC's comments and reiterates that if a customer damages the system, it is responsible for paying.

Section 5.5.5 Power Factor

Joint TDUs recommended that the ERCOT Standard Power Factor "shall be the same value as required of the Company in ERCOT Protocol 5.2.1" and that customer facilities be required to be consistent with this standard. The REP Coalition noted a discrepancy in this section since the lead in paragraph of Section 5.5.5 states that the Power Factor requirement is set at 95% however, the formula used to determine the Power Factor Adjusted kW when the minimum 95% requirement is not met refers to the ERCOT Standard Power Factor which is currently set at 97%. The REP Coalition strongly urged the commission to maintain the 95% level. The REP Coalition provided examples that TXU, AEP Texas Central and AEP Texas North had all recently implemented Power Factor billing in their service territories based on the current 95% level and many customers have already made or are in the process of making significant investments to correct their Power Factor to 95%, a change would require additional expense to increase their Power Factor to 97% or pay an additional amount based on the Power Factor adjustment formula. Joint TDUs argued that the current standard set by ERCOT is 97% and the only reason that these same customers were not required to purchase equipment to correct their load to 97% was because the 95% standard was hard coded into the tariff. Additionally, Joint TDUs stated that not all eligible customers are currently Power Factor metered and many customers have not yet purchased any equipment to correct their Power Factor and it is imperative that these customers are not caught in the same situation. TIEC disagreed with the TDU approach. TIEC stated that this change would require some customers to make significant investments without which the customer will face a financial penalty. Further, if such a move is necessary, TIEC reported that implementation would take considerable time (12-18 months) and customers would need sufficient time to install facilities before the new billing treatment would be appropriate. Joint TDUs stated that if the REPs prevail on this point, Joint TDUs are caught in a catch 22 since the current standard Power Factor provision can only be changed in a rulemaking regardless of what happens in a TDU's rate case. If the change doesn't get made now, Joint TDUs are precluded from making any change in their rate case and this proposed change is necessary to increase the efficiency of the ERCOT transmission and distribution system.

The REP Coalition stated that changing the minimum Power Factor constitutes a change in rates to the end-use customer and the REP Coalition believed a Power Factor change is more appropriate for a rate case proceeding, not this rulemaking. Joint TDUs disagreed that it was a rate change, but agreed it does affect billing in the same manner as occurs when a customer demands more power and energy and neither instance constitutes a rate change.

Commission response

The commission agrees with TIEC and the REP Coalition that the standard Power Factor remain at 95% as approved in the TDU tariffs. The commission finds that customers need stability when being required to build facilities. As the ERCOT Power Factor is now set at one value, it could change yearly or even more frequently as protocol revision requests are approved. The commission finds that this situation is too dynamic for customers and that the value should not be the ERCOT protocol value but the standard 95% value.

Joint TDUs also proposed that if the facilities do not meet this standard or if facilities were found to be causing Delivery System problems for other Retail Customers and the customer failed to correct the problem after sufficient notice, the TDU be permitted to install the necessary equipment to correct the problem and require the customer to reimburse TDU for the cost. TIEC disagreed on the inclusion of the term "causing Delivery System problems for other Retail Customers" as it potentially raises the Power Factor standard for some customers to an unspecified level and leaving it solely to the utility to judge what system "problems" are. TIEC argued that reliability issues caused by other customers' operations are adequately dealt with in Sections 5.4.1 (which requires that a customer's facilities not cause impairment of TDU's Delivery Service to other Retail Customers or others), 5.5.1 (requiring load balance), and 5.5.2 (which bars operation of equipment that adversely affects Delivery Service to other Retail Customers or that may be detrimental to the Delivery System). Joint TDUs responded that other provisions in the tariff could allow the TDU to require the Retail Customer to modify its use of the delivery system, the proposed language makes it more clear that a customer Power Factor can cause problems for other customers that would require the Retail Customer causing the problem to take corrective action. The REP Coalition stated that it did not object to this provision provided the TDU will no longer assess the Power Factor adjustment once the customer reimburses the TDU for correction equipment.

Commission response

The commission agrees with TIEC that "Causing Delivery System problems for other customers" is accounted for elsewhere in the tariff however, Section 5.5.2 is the only section which discusses the ability of the TDU to require the installation of equipment to reasonably limit the adverse effect on other customers. The commission concludes that the language in other sections of the tariff does not adequately address what happens when the customer fails to comply with the TDU's request, and finds that the language in Section 5.5.2 is a necessary element for resolution. The commission notes that similar language exists in the current tariff which allows the TDU to require the customer to arrange for installation of appropriate equipment, or at the customer's option, to reimburse the company for such installation. The commission does share TIEC's concern that the TDU not have the latitude to establish Power Factor requirements that are higher than needed to meet the standard in the tariff, and therefore clarifies that the fix will correct the problem to the commission's standard Power Factor of 95%.

Joint TDUs also noted that one TDU had a different formula for Power Factor calculations and added a provision for the Power Factor to be calculated differently if it appeared differently in Company's specific tariff.

Commission response

The commission declines to amend the tariff as proposed as it could perpetuate the non-standardization of Power Factor calculations among the TDUs but agrees to allow the affected TDU until its next general rate case to comply with this formula.

CRMWD stated that in the past it has suffered through the misapplication of the Power Factor adjustment as allowed in Section 5.5.5 of the tariff as some TDUs use a Power Factor set one month and apply it to a kW established during the 4-CP interval set months before. CRMWD stated that this leads to artificially high kW demand values and consequently artificially high TDU charges. For example, CRMWD represented that one of its pump station accounts typically operates during the summer months and is idle during the winter. The Power Factor during the winter may be as low as 6% but when that is applied to the average kW set during the 4-CP intervals a kW is calculated that is physically impossible and produces inappropriate charges when the delivery system did not actually experience anywhere near the kW load calculated. CRMWD suggested changes to make clear that the Power Factor should be the Power Factor measured during the same 15 minute interval as the ERCOT peak as this would prevent a TDU from using a high kW demand set coincident with the ERCOT peak and a Power Factor set during an interval with different demand conditions. Joint TDUs responded that the TDUs are currently applying the Power Factor provision exactly as written however, the TDUs have seen that by applying the formula exactly as written, unintended consequences sometimes result. Therefore, Joint TDUs have proposed changes in this rulemaking that specifically address CRMWD's concerns. These changes, the TDUs stated, ensure that the Power Factor used in the power adjustment formula is directly related to the kW used in the calculation.

TIEC suggested that changes be made to the billing formulas to allow for recalculation of Power Factor adjusted billing demands once any identified shortcoming has been corrected to ensure that both the customer and the utility have the proper incentives to timely correct any Power Factor issues without unduly harming the customer or unjustly enriching the utility. Joint TDUs argued that this is contrary to the concept of cost causation and cost recovery for the TDU, the Joint TDUs stated that the Joint TDU's proposal is consistent with the current billing provisions contained in the tariff in that the effects of a Power Factor that is outside of the standard may have an impact on billing for up to 11 months.

Joint TDUs recommended adding a new subsection (3) to read "Power Factor Adjusted Monthly NCP kW demands will be used in determining the Billing kW under the applicable tariff schedule."

The REP Coalition pointed out that the Joint TDUs recommendation to add subsection (3) would subject the customer to Power Factor adjustments on all rates and riders that are based on billing demand.

Commission response

The commission believes that the formula proposed by the TDUs will address the problems expressed by CRMWD and therefore the commission adopts the formula proposed by the TDUs with the exception that the 95% Power Factor that the tariffs currently contain, be inserted where the ERCOT Standard Power Factor has been proposed by the TDUs.

Joint TDUs recommended including the phrase "or leading as measured at the meter." The REP Coalition suggested this should be rejected as this is a new requirement because it could prove problematic for some customers, leading Power Factors are not common occurrences and are beneficial to the TDUs operating the system in aggregate because they help increase a lagging Power Factor on the system.

Commission response

The commission agrees with the REP Coalition and determines that leading Power Factors should not be included in this section.

Section 5.5.6 Testing of Retail Customer Equipment

The REP Coalition supported this proposed change as it will provide customers with an opportunity to conduct much needed testing of new equipment without establishing a new peak demand that will follow them for the next 11 months. Joint TDUs recommended a phrase be added making it clear that the Company can bill for the actual usage (kWh and kW) that occurs during a test. They stated that while it is appropriate that the demand created by a pre-approved test not be used to set ratchets or otherwise affect future billing, it is also appropriate that in the billing cycles where the testing occurs that the actual usage (kWh and kW) from the test is accounted for and paid for.

Joint TDUs recommended language be added to make it clear that there may be charges associated with services the Company provides to assist in the test such as resetting the meter, and that the charges will be billed to the REP.

Commission response

The commission agrees that the customer should be responsible for any charges incurred due to additional services provided by the Company during the testing, and agrees that the customer should be responsible for usage (kWh and kW) in the test month. The commission also agrees with commenters that the demand set during a test should not be used in the calculation of any demand ratchets. The commission amends this section accordingly.

OPC suggested that a comparable benefit be given to Retail Customers not testing equipment. Joint TDUs responded that if OPC's concern is that customers doing tests are not required to pay for their actual demand and usage, the Joint TDUs' proposed language should eliminate the concern. The Joint TDUs continued that if it is the basic concept with which OPC disagrees, Joint TDUs do not see how or why customers who do not test equipment should be given some sort of benefit.

Commission response

The commission is not clear as to OPC's concern. The commission notes that this benefit is only applicable to customers testing equipment because they are the customers who would be harmed by the resetting of demand because of a test. The commission is unaware of a comparable benefit that could be given to other customers not testing equipment and notes that OPC did not propose language to address its concern. Therefore, the commission declines to amend this section to address these comments.

Section 5.7.1 General

TIEC stated its belief that where a Retail Customer either makes a Contribution in Aid of Construction (CIAC) or pays for certain facilities that are then owned and operated by the utility, the pro-forma tariff should mandate that subsequent Retail Customers bear an appropriate share of those costs if appropriate. TIEC commented that this protection may not be necessary in all instances, but where Retail Customers pay for facilities that ultimately serve others, the tariff should require an appropriate reimbursement of the initial costs. TIEC pointed to their discussion in comments on the Staff Strawman for additional details. In reply comments, Joint TDUs stated that Staff has correctly determined based on comments submitted in response to Ques-

tion 3 in the Staff Strawman that TIEC's position is without merit. Joint TDUs stated that existing company-specific tariff provisions for the calculation of the CIAC already take into account the expected future load growth from additional Retail Customers to be served from the facilities to be installed; and provide for appropriate balancing of cost to install facilities and cost to serve future load growth and reflect appropriate cost causation principles. Joint TDUs pointed to their discussion in comments on the Staff Strawman for additional details.

Commission response

The commission agrees with Joint TDUs that to the extent that existing company-specific tariff provisions take into account expected future load growth from additional retail customers from the facilities to be installed, there is no need to address it here. The commission declines to amend this section.

Section 5.7.3 Processing of Requests for Construction of Distribution Facilities

Joint TDUs commented that in the title of this section, the term "Distribution" should be changed to "Delivery System" because it is a defined term and accurately references the facilities addressed in this section.

Commission response

The commission agrees and amends the title accordingly.

Joint TDUs stated that the ten day timeframe for providing an estimate of time for construction and cost of construction is unrealistic for large, complicated projects. Joint TDUs stated that in such an instance, the Retail Customer and the Company should be allowed to agree on a different deadline for provision of this information. Joint TDUs recommended that language should be added to the last sentence to make this clear.

Commission response

The commission agrees and amends this section accordingly.

Section 5.7.7 Temporary Distribution Facilities

Joint TDUs commented that in the title of this section, "Distribution" should be changed to "Delivery System" because "Delivery System" is a defined term and accurately references the facilities addressed in this section.

Commission response

The commission agrees and amends this section accordingly.

Section 5.7.8 Removal and Relocation of Company's Facilities and Meters

Joint TDUs recommended changing the references of "Section 6.1" to "Chapter 6" because the Facilities Extension Policy for some TDUs in found in Chapter 6, but not in Section 6.1 Rate Schedules.

Commission response

The commission agrees and amends this section accordingly.

Section 5.7.9 Dismantling of Company's Facilities

Joint TDUs stated that the cooperation between the Retail Customer and the Company is highly necessary in scheduling the removal of outdoor lighting. Joint TDUs gave the example that when a shopping center is renovated; the parking lot lights need to be dismantled at a time that will not interfere with other work that is occurring. Joint TDUs commented that the phrasing in the published rule would require all of the work to take place on the date requested, which is a single day, and which could be impossible if it is a large job. Joint TDUs added that the TDU should be allowed some flexibility with regard to when it performs this low priority service, and therefore the section should be rephrased to provide that the work will be done within 30 days of the day the request is received by the Company or at another mutually agreeable time.

The REP Coalition supported the language in the proposed tariff which specifies the timing for removal of outdoor lighting as well as the prohibition from charging for outdoor lighting removals initiated by the TDU. Joint TDUs disagreed with the REP Coalition and responded that there is no need to provide deadlines for these services in the tariff and the proposed language does not cover the wide variety of services that could be required.

Commission response

The commission understands that cooperation between the Retail Customer and the Company may be necessary in certain circumstances, but disagrees with Joint TDUs that "within 30 days of the day the request is received," "or another mutually agreeable time" are appropriate service standards for this service. These suggestions do not give the Retail Customer any assurance that the requested service will be completed in a timely manner, and do not give any consideration to the date that the Retail Customer has already determined to be acceptable to their schedule. The commission does agree, however, that the language should contemplate the fact that some services may take longer than a day to complete, and has added language to that effect.

Section 5.8.1 Billing of Delivery Charges

The Joint TDUs stated that the first sentence should be deleted because it is duplicative of the last sentence, and that the reference to Delivery System charges should be changes to Delivery Service Charges. Joint TDUs stated that they understand that any services requested by the REP or customer as well as tampering charges or any other charges attributable to a time when the REP was the REP of Record will be charged to the REP pursuant to this language. The REP Coalition strongly disagreed, stating that customers expect to receive one complete final bill from their REP, not a bill for final usage and then a subsequent bill for discretionary charges. The REPs concluded that since there should be no discretionary charges associated with activity at a meter after issuance of the final meter read, it is not unreasonable to expect the TDU to make sure the invoice for final usage includes all other outstanding charges for that ESI ID.

Commission response

The commission agrees with the Joint TDUs that the sentences are duplicative, and that the reference should be amended, and amends the section accordingly. The commission reiterates its response to Section 4.3.13.1 regarding the billing of tampering charges.

Section 5.9.1 Company Remedies on Default by Competitive Retailer

Joint TDUs stated that this section is unnecessary in the tariff, and if its purpose is to alert the Retail Customer to the fact that a transfer could occur it should appear in the Customer Protection Rules rather than in the tariff.

Commission response

The commission disagrees that this section is unnecessary. The section communicates to the customer that the failure of their

REP to abide by the tariff may result in the customer being transferred to another REP. Therefore, it is appropriately located in the tariff.

Section 5.10.2 Retail Customer Responsibility and Rights

Joint TDUs suggested the first paragraph should be revised to conform with Section 4.7.1, they also suggested some other clarifying language.

Commission response

The commission agrees that the first paragraph should be revised to conform with Section 4.7.1, but does not agree with the specific language proposed by Joint TDUs, as discussed in the commission response to Section 4.7.1. The commission agrees with the clarifying change in the second paragraph and amends the section accordingly.

Section 5.10.5 Non-Company Owned Meters

The REP Coalition supported the proposed language that provides that if the changing of a meter causes changes to settlement profile, the settlement profile will change at the next billing cycle. Joint TDUs agreed and suggested language to reflect recent changes in PURA that allow only commercial and industrial Retail Customers required by the Independent Organization to have an IDR meter to have a non-company owned meter.

Commission response

The commission disagrees that this change is necessary. The law on this has changed the last two legislative sessions and it is burdensome to continue changing the tariff based on these changes. What is written in the tariff does not violate PURA, therefore the commission declines to make the changes as suggested by Joint TDUs.

Section 5.11.1 Service Inquiries

The REP Coalition supported this requirement. Joint TDUs did not support the requirement and stated that if included, the number of days should be changed from two to five Business Days to respond to a customer inquiry.

Commission response

The commission agrees with the REP Coalition and declines to amend the section.

Section 5.12.2 Response to Reports of Interruptions and Repair Requests

Joint TDUs stated that this section should not require notification to the REP because there is no existing market transaction through which this could be done in all instances. Therefore, to implement this requirement, the market would have to create a transaction to notify REPs. Joint TDUs added that REPs have pre-authorized the charges, and the invoice clearly indicates any charge that is made for this type of service and this should be sufficient notice to the REP.

Commission response

The commission agrees with the Joint TDUs that the REP has pre-authorized the charges but disagrees that an invoice many days later is sufficient notice to the REP, as the REP, for customer service reasons may have need of the information to report findings to the customer, or to follow up with the customer. Therefore the commission finds that notifications should be given to the REP and declines to make the change.

Implementation Issues

The REP Coalition stated that it was pleased with the commission's move toward standardizing basic Discretionary Services among all TDUs for the ultimate benefit of end-use customers. The REP Coalition urged the commission to approve the timelines proposed in Staff's original strawman rule for four basic TDU services including move-ins, move-outs, reconnections, and meter re-reads for standard implementation across all TDUs on the effective date of the commission's adoption of the revised tariff. This action would ensure that REPs and customers receive the long-awaited benefits of standardization of the most basic customer services within six months of the commission's adoption of the revised tariff, or by June 15, 2006 per the commission's proposed date for TDUs to make their compliance filings reflecting the revised tariff. In reply comments, the REPs added that as the market matures, it is important that certain efficiencies be attained. If REPs are to offer valuable competitive services to Retail Customers in a way that fosters healthy economic competition, they must be able to count on consistent and standard services from transmission and distribution suppliers.

The Consumers stated that customer service is improved by reducing customer confusion and providing uniformity among service areas. The REP Coalition responded in agreement and requested that the commission adopt the REP Coalition recommendation to require standard Discretionary Services throughout all TDU territories in this proceeding.

The Consumers stated that keeping customer service representatives fully informed and trained is a challenge in any industry. The Consumers stated that REPs serving Retail Customers in multiple TDU service areas should not have to train staff on service area specific tariff provisions unless it is unavoidable. When service standards are the same across service areas it reduces confusion for the Retail Customer. The Consumers added that after two and a half years of working on these tariff revisions they come as no surprise to the industry and they should be operating with the intention of making these changes next year.

The TDUs commented that the proposal to standardize the highest volume/most frequently utilized Discretionary Services represents a significant change for the Texas retail electric market and if implemented will have a far-reaching impact on the TDU's operations and costs. The TDUs stated that they did not oppose the move to standardize services, if the commission decides that the benefits outweigh the costs, but added that it should be noted that although the REPs claim that consistency will benefit Retail Customers, REPs are not required to offer all Discretionary Services to Retail Customers, and not all Discretionary Services are currently offered by REPs. The TDUs stated that the benefits to the market remain unclear.

The REP Coalition disagreed, and stated that parties have shown the benefits of standardization throughout this rulemaking and such benefits clearly outweigh the associated implementation costs. The REP Coalition added that the commission itself has already identified some of the benefits of standardization, one of which was outlined in its underlying policy goals reflected in the 2003 Scope of Competition Report. Additionally, in discussing the initial tariff rulemaking, the commission recognized that "standardized tariffs are intended to reduce a REP's cost of entry into the market." The REP Coalition gave additional examples that REPs will be better able to manage their operational costs and Retail Customers' expectations when they can rely on consistency among TDUs for these services; Texas consumers will gain more confidence

that deregulation is working because their REPs will be able to provide better customer service; all REPs will be in a better position to offer all of the Discretionary Services if the they are standardized among the TDU territories; and all REPs will be in a better position to enter each of the TDU service territories, thereby increasing competitive offers in the Texas market. The REP Coalition added that the TDUs provided no support for their statement that not all REPs offer all available Discretionary Services, and that if it is true, it ignores that the Texas retail market is competitive, and REPs are not obligated to offer all Discretionary Services to their Retail Customers which is an aspect by which REPs can differentiate themselves, and REPs offer different service, products and incentives as they are able and willing. The REP Coalition stated that TDUs are not subject to competition, but instead provide the infrastructure for REPs to be able to offer retail electric services. Additionally, REPs may not offer all available Discretionary Services to Retail Customers because those services are not standardized across all TDU territories. In order for a REP to offer consistent, uniform service to all Retail Customers, they may be forced to offer the "lowest common denominator" of services that exist among the TDU territories in which they do business.

Joint TDUs stated that standardization should be limited to the highest volume/most frequently utilized Discretionary Services, such as Move-ins and disconnections. The REP Coalition agreed with the Joint TDUs that the standardization of these services, in addition to the standardization of Move-outs, Standard Reconnects after Disconnection, and Meter Re-Reads are high priority and should be standardized first. The REP Coalition proposed that these be standardized by June 15, 2006.

Joint TDUs generally agreed with the Discretionary Services proposed for standardization in the published rule and the timelines and service guidelines applicable to them, provided that the changes recommended by the TDUs are adopted. Joint TDUs argued however that "Non-Standard Meter Installation" and "Outdoor Lighting" should not be included as standardized services since they are not high volume, commonly utilized services, and do not lend themselves to single descriptions, with a single, standard charge. The REP Coalition disagreed that other services should not be standardized because they are of great importance to Retail Customers and are commonly used. The REP Coalition proposed a schedule for the various services and timelines by which the REP Coalition believes standardization can be achieved, which the REP Coalition stated would address the Joint TDUs' comments that request implementation of the most frequently used services first, and opportunity for subsequent proceedings to implement and standardize all other Discretionary Services.

Joint TDUs commented that the proposed standardized Discretionary Services will require significant time to implement and the TDUs must be allowed to recover the costs associated with implementation as well as the costs of providing the services. ERCOT commented that any provisions that would require changes to ERCOT systems, business processes or the TX SET retail market transaction system may require projects to be initiated with funding allocated through the ERCOT project prioritization process. The REP Coalition acknowledged that there may be instances in which market processes, protocols and guides may need revision to accommodate tariff changes, but the REP Coalition assessment of the required changes to transactions concluded that the changes would be minimal and would not themselves compel a new TX SET version release. The REP Coalition stated that even if unforeseen changes are subsequently identified, there is already a placeholder on the ERCOT project prioritization list for changes to implement revisions to the tariff and are designated as mandatory with the highest priority. The REP Coalition recommended that the commission reject the TDU's position that no date certain be included in the tariff for implementation of changes.

The TDUs argued that the rates for the standardized services must reflect the costs incurred by all TDUs and therefore must be utility specific, and that the published proposal correctly reflects that implementation will occur on the basis of individual utility rate cases. The TDUs recommended the inclusion of language to make it clear that the new service requirements will not be effective until the market and internal system and process changes necessary for implementation also have been accomplished, and noted that it is possible that these will not be completed until after a TDU rate case. The REP Coalition agreed that TDUs should have a reasonable opportunity to recover costs, and stated its belief that its implementation proposal recognized an appropriate timeline. The REP Coalition stated that the four basic services that are already common among all TDUs could be standardized sooner without revision, and the other services can be standardized through expedited Discretionary Services proceedings by September 1, 2006. The REP Coalition also agreed with the TDUs that the changes should not be implemented on a piecemeal basis which the REP Coalition believes will be the result if the commission's current timeline for these changes is adopted.

The TDUs stated that it is important that prior to implementation and the rate cases, the commission make known its expectations with regard to how compliance will be enforced with regard to specific requirements and strict timelines contained in the description. This is necessary in order for the TDUs to project the staffing and equipment, and therefore the cost of providing these services. The TDUs added that they recommend that 100% compliance in every instance not be the standard, and that compliance be assessed over time, on the basis of performance metrics. The REP Coalition responded that TDUs do not need to wait until performance measures are established before they initiate proceedings to standardize Discretionary Services because performance measures account for extenuating circumstances under which a TDU is not able to perform a service within the expected timeframe. The REP Coalition argued that when TDUs initiate these Discretionary Services proceedings, staffing should be designated to meet a performance standard of 100% under ordinary circumstances, but that a performance standard of slightly less than 100% must be adopted in order to recognize unusual conditions that may periodically occur.

The TDUs recommended that the numbering and titles of Chapter 6 be expanded to included two subheadings under Sections 6.1.2.1, 6.1.2.1.1 "Standard Discretionary Services" and 6.1.2.1.2 "Company Specific Discretionary Services." The TDUs stated that this will provide a place for those Discretionary Services that will remain company specific and that also will be billed to the REP. Additionally, the TDUs recommended that the language proposed under "i" that requires uniform application of TX SET codes be moved to Section 6.1.2.1.1, the subheading that is applicable to the Standard Discretionary Services. The TDUs commented that the language does not apply to the company specific services, for which uniform TX SET codes may not exist, and that the language addressing implementation is better located in §25.214. The TDUs commented that if it remains here, it should also be included in the rule, and should be

relocated because it is currently only applicable to the Standard Discretionary Services.

In reply comments the TDUs supported the approach specified in the proposed amendments for implementation of the standardized Discretionary Services, including putting all requirements in the Chapter 6 Rate Schedules rather than in Chapters 4 and 5, and implementing the new Rate Schedules pursuant to a TDU rate case.

Outside of the immediate implementation of the four basic TDU services, the REP Coalition suggested that standardization of all other Discretionary services as proposed by the commission in Chapter 6 should be initiated by the TDUs by September 1, 2006. The currently proposed rule requires TDUs to initiate a proceeding to approve Discretionary Services charges by June 30, 2007, if the TDU has not initiated a full rate case prior to that date. The REP Coalition stated that under the proposed timeline it is likely that standardization of the remaining Discretionary Services will not occur throughout the market until 2008, more than two years from now, and more than four years from the time this project was initiated. While the REP Coalition is pleased that the proposed rule contains a date certain when TDUs must initiate a proceeding, it encouraged the commission to shorten the timeline, to enable customers and REPs the opportunity to begin taking advantage of the new standardized service offerings and the efficiencies to be gained through such standardization.

The TDUs stated that while the proposal to standardize the highest volume Discretionary Services represents a significant change for the Texas retail electric market and will have far reaching impact on the TDUs operations and costs, the TDUs do not oppose this move if the commission believes the benefits of standardizing some Discretionary Services outweigh the costs.

The TDUs responded that the claims by REPs that standardization has been unreasonably delayed are misleading. First, there is already an unprecedented amount of standardization with regard to TDU services based on existing tariff and transactional requirements that are in place in the market. Second, considering the myriad of issues raised and the detail involved in developing language changes to the current 69 page tariff as well as the huge impact on the market that changes will cause, this rulemaking has proceeded in a timely manner.

The TDUs also disagreed that the service completion requirements for the four basic, everyday services should be imposed as of June 15, 2006. The TDUs are unclear as to which services the REP Coalition proposes be standard as some contain standard, priority or same day service. Secondly the TDUs argued that the REP Coalition's arguments in support of their proposal are inconsistent. If implementation will be easy because few changes are required then standardization is not desperately needed. The TDUs stated that these services are already offered by all TDUs and are provided under standard timelines established by the transactional market, and adoption of timelines in the tariff will not result in any significant change in the level of standardization that exists in the market today. The TDUs continued that despite REP's claim to the contrary the REPs are proposing significant changes to the current standard reconnect requirement stated in the Customer Protection Rules. That would make the timeline for reconnection more stringent than what is currently in effect in the market today.

Additionally, the TDUs furthered, if the REPs are proposing immediate implementation of the timelines for priority move ins and same day after hours reconnects, the TDUs either do not have standard provisions for or in some cased do not offer these services. Changes such as these would require hiring, training additional personnel, changing processes and acquiring additional equipment, all of which would increase costs and the charges to be applied and would have to be considered in a rate case. The published amendments correctly recognize that service expectations and charges are linked and that because rates will have to change if the timelines and other service descriptions change, all of the changes should be made in the context of a rate proceeding. The TDUs stated that implementation of some of the timelines now, and others later, in different portions of the tariff would be confusing and unwieldy. The REP Coalition restated its intended proposed changes and dates for standardization in reply comments. The REPs proposed that Standard move-ins, move-outs, standard reconnect after disconnect for non-pay and meter rereads should be standard by June 15, 2006. The REPs proposed the following charges be standardized through PUC proceedings initiated by September 1, 2006: priority move-ins, customer requested clearance, disconnect for non-pay, same day reconnect after disconnect for non-payment, meter test charge, out-of-cycle meter reads associated with a switch, service call charge, security lighting repair, security light removal, street light removal, tampering, and broken meter seal.

The TDUs stated that the REPs' claim that immediate implementation is needed for a REP to be able to tell its customer with certainty when basic services will be provided by the TDU is disingenuous. The TDUs argued that in the market as it exists today, REPs can communicate to their customers the standard expectations for when TDU services will be provided based on the timelines applicable to the transactional system. The TDUs stated that while they don't achieve 100% performance, the REPs recognize that even under the proposed tariff, 100% compliance at all times would also not occur and would not be expected even after timelines are added to the tariff.

The TDUs argued that for the other Discretionary Services that the REPs proposed, new TX SET releases will be necessary, completion of which will take a significant amount of time. Some of the proposals will require ERCOT protocols or market guide revisions. Similarly, changes to TDU and REP processes will be required and the degree of what is required and how quickly it can be achieved will only be known some time after final adoption of the tariff. Requiring a rate filing no later than September 1 and an effective date of four to six months later could result in implementation of the new tariff provisions before the market has made the changes necessary to properly implement those provisions. The commission should make clear that none of the changes mandated in this rulemaking are to be implemented through manual, rather than electronic processes, and that none of the services must be offered or timelines met until such time as all of the requisite details have been accomplished. Secondly, the TDUs argued, the performances measures must first be adopted as there will be cost differences between achieving a 90% performance metric as opposed to achieving a 95% performance metric.

Therefore, the TDUs recommended, that instead of implementing any of the revised tariff provisions immediately, or stating a date certain in the rule for either the effectiveness of certain provisions or the filing of TDU rate proceedings, the commission instead open an implementation docket immediately upon conclusion of this rulemaking, pursuant to which an implementation schedule can be adopted and progress monitored. Additionally, even if a new rate case has been completed, the commission should ensure that the new service requirements will

not become effective until market and internal and system and process changes necessary for implementation have been accomplished.

Commission response

The commission desires to have the changes proposed in this tariff and in Chapter 6 effective as soon as possible but realizes that these changes will require TDU system changes and may require TX SET changes as well. The commission believes that standard move-ins, move-outs, meter re-reads and standard reconnects will not require such changes, and therefore finds it appropriate to include the requirements for these standard services in Chapters 4 and 5 so that they may be implemented in July of 2006. The commission agrees to leave the items that require systems and process changes in Chapter 6 but moves some of the implementation dates to a date earlier than was proposed. The commission believes that there is enough time to implement the Texas SET changes, TDU and REP systems changes, and TDU discretionary service charges by July 1, 2007, and therefore finds that July 1, 2007 is the appropriate date for the implementation of Chapter 6. The commission agrees with the Joint TDUs that an implementation proceeding should be established to follow the implementation of changes from this rule and set dates for TDUs to file tariff cases for approval of modified discretionary service charges (if the TDU has not filed a rate case with the new effective Chapter 6 Discretionary Services at a time which could be approved and in effect on July 1, 2007).

Chapter 6

Normal Business Hours

The Consumer Commenters stated that electricity is an essential service and it is unacceptable for an electric provider to have working hours that prevent working customers from being able to contact them when they are not working. They proposed that at a minimum, the TDUs should be required to be open for normal business hours from 7:00 a.m. to 7:00 p.m. Monday through Friday.

TDUs stated that the consumers misunderstood the provision in the proposed rate schedules concerning hours that the company shall be open for normal business. The TDUs stated that TDU personnel currently receive and respond to trouble calls at all times and will continue to do so and this work is not part of the normal business that this language is intended to cover. It is unnecessary and would not be appropriate to expand normal business hours from 7:00 a.m. To 7:00 p.m. as "normal" TDU business hours should correspond to a "normal" eight hour work day.

The TDUs recommended that the statement regarding normal business hours be changed to reference the defined term Business Day rather than Monday - Friday, this will incorporate holidays that fall on weekdays.

Commission response

The commission agrees with the TDUs that because the company is available for emergencies and trouble calls at any time that it is unnecessary to require the TDU to be open from 7:00 a.m. to 7:00 p.m. The commission also agrees with the TDUs that holidays that fall on Business Days should be excluded from the normal business hours, but holidays should be included in emergency hours. The commission also finds that emergencies aren't restricted to weekends and holidays but to all time periods and changes the language to clarify that.

Move-In

The Consumers commented that under the tariff a priority move-in request only has to be processed the same day if the request is receive by noon, and argued that if a Retail Customer is paying a charge to have new service connected it should be connected the same day. The Consumers recommended that noon be changed to 7:00 p.m. The TDUs responded that this proposal is not practical because an order received at that time cannot be processed, dispatched and completed that late in the day.

Commission response

The commission agrees with the Consumer Commenters that the time should be extended but also agreed with the TDUs that 7:00 p.m. could be unreasonable in certain situations such as when the TDU must drive a long way to the premises. Therefore, the commission agrees to change noon to 5:00 p.m. to give the TDU more time to receive the transaction and to make it consistent with same day reconnects.

The REP Coalition strongly supported the commission's two-tier approach for move-in charges to give Retail Customer the flexibility to schedule services with sufficient lead-time for a standard charge or on a priority basis when time is of the essence. However, as currently defined, Retail Customers can either request two or more Business Days in advance, or on the same day, which leaves a gap for Retail Customers who call for service one day in advance. The REP Coalition recommended that the description of a Priority Move-In be modified to include next day service as well as same day service to eliminate the gap. The REP Coalition added that the word "Days" appears to be stricken from the description of a Standard Move-In and should be reinserted.

The TDUs responded that with several conditions, the TDUs did not object to this proposal. These conditions include that the request be coded as a Priority Move-In because if it is not, it will be treated as a Standard Move-In request and the requested date will be moved to the second Business Day; and the service will only be provided on a Business Day. The TDUs responded that the REP Coalition's proposed tariff language removes this requirement and would allow a REP to send a Priority Move-In request on a Saturday, requesting that service be completed either that day or on Sunday, and argued that the TDU should not be required to provide Priority Move-In service on weekends or holidays, when the TDUs are available for emergency reconnections. The TDUs argued that they should be allowed the entire following Business Day to complete the work, both if the service is requested for the following day, and when the request is for service the day of the request, but the request is received after noon. If a noon deadline for working the order applies to requests that come in after noon of the previous day, but not to other orders to be worked the following day, the variety of service options will be bewildering and services will be difficult to schedule. Additionally, the TDUs argued that their processes are set up to schedule work by the day, not by the hour, and scheduling some Move-Ins to be completed by noon will result in inefficiencies and increased costs.

Commission response

The commission agrees with the TDUs, that move-in service should be for Business Days rather than weekends or holidays and amends accordingly. The commission agrees that to receive priority service, the REP must send a move in that is coded "pri-

ority" as priority will now cover same day and next day requests and notes that this is already included.

Standard Move-In

The TDUs stated that the first sentence should be deleted to conform to the format used for "Priority Move-In." The REP Coalition disagreed with this suggestion.

Commission response

The commission agrees with the Joint TDUs that the two services should conform. We have made changes to both priority service and standard service to ensure that these services work together.

The TDUs commented that additional detail should be added to describe fully what will occur when orders are received after 5:00 p.m., on a non-Business Day, less than two days prior to the requested date or when the requested date is not a Business Day. In reply comments, the REP Coalition agreed with this suggestion.

Commission response

The commission agrees with the Joint TDUs and makes the changes to Chapter 6.

The TDUs stated that the timeline for Standard Move-In should only apply to situations in which all preparatory work has been completed, including installation of a meter if required and only after required permits have been granted. The TDUs noted that when a meter does not exist at the Premises, different equipment and personnel are required to install it, connections to underground transformers or installation of service drops may be required, and this work cannot be completed under the Move-in timeline. This is anticipated in Section 4.3.2.2, which correctly refers to the process for Move-in without construction service, only after completion of construction service, and therefore there should only be one charge applicable to a Standard Move-in, rather than one for "pre-existing" and another for "new." The REP Coalition agreed with the language regarding required permits, but disagreed that the Standard Move-in timeline should not apply where the only remaining activity is installation of a meter, because it is no more complex than un-sleeving a meter for a reconnect after a disconnection for non-payment if all other construction services have been performed. The TDUs added that service should not be available when other services are required, or other issues have to be resolved prior to the Move-In. The REP Coalition stated that consistent with their comments under Standard Move-in, the Priority Move-in timeline should apply in situations where the sole remaining activity is the installation of a meter.

Commission response

The commission understands that it may take more time to perform a move-in if a meter installation is required because of the work that the TDU must do such as setting the meter and checking the voltage. The commission also understands that the TDUs use different terminology for meter installation and that it encompasses different services for different TDUs, and that coming to common terms is part of the standardization process. The commission finds it reasonable to expect a TDU to complete a move-in on a new premises that does not require inspections and permits, or other construction work, to be done within a set timeframe that the customer and REP can count on, and that if all other work has been done, the last work for a meter installation should be done within this timeframe. However, because of the extra work required, the commission agrees that it is not appropriate for Priority Move-In service to apply to situations in which there is not an existing meter, and amends the language accordingly.

Priority Move-In

The TDUs stated that in lieu of the last sentence, additional detail should be added describing what will occur if the request is received after noon but before 5:00 p.m., or after 5:00 p.m. on a non-Business Day. The TDUs proposed language to state more clearly how the service will be provided. In reply comments, the REP Coalition agreed with this suggestion.

Commission response

The commission believes that if the request is received before 5:00 p.m. then the request should be completed by the end of the following Business Day. The commission clarifies the priority language.

Move-Out

The REP Coalition supported the commission's proposed approach to charges for Move-outs including bundling the cost of a move-out with the cost of a move-in and the service performance standard that requires TDUs to disconnect service on the requested date if two or more Business Days notice is provided. However, the REP Coalition recommended the addition of language in the description of the move-out to allow TDUs to reschedule a move-out when two or more Business Days notice is not provided. The TDUs responded in agreement to this recommendation. The TDUs noted that the REP Coalition is supportive of the proposal to recover the costs associated with a move-out, as part of the charge for the move-in. The TDUs stated that they do not object to this approach, but find it curious that the REPs claim the "basic" standardized service can be implemented immediately upon conclusion of this rulemaking, given their support of this change to how the charge is structured, and that none of the TDUs currently have charges designed this way. The TDUs added that changing the charges can only be accomplished in a rate case, in which costs can be appropriately allocated and charges developed to cover them.

Commission response

The commission agrees with the Joint TDUs and the REP Coalition and makes the changes proposed by the Joint TDUs.

Disconnect for Non-Pay Charges

The REP Coalition recommended that the phrase "or Company" be deleted from the first sentence of the "Disconnect for Non-Pay" description of service because one could infer that the REP will be billed for a disconnection associated with a TDU's decision to disconnect a Retail Customer for non-payment of charges billed to the Retail Customer by the TDU. The REP Coalition stated that clearly, a TDU that decided to disconnect for charges billed by the TDU directly to the Retail Customer pursuant to Section 5.3.7.2 should be responsible for the cost to execute their own disconnect. The TDUs disagreed and stated that this charge should be applicable whether the disconnection results from failure to pay amounts owed to the REP, or failure to pay amounts owed to the TDU. Further the TDUs stated that to make this clear, "requests from Competitive Retailer to" needs to be deleted because when the disconnection occurs as a result of failure to pay amounts owed to the TDU, the disconnection will not have been requested by the REP.

Commission response

The commission agrees with the REP Coalition that if the TDUs have made an agreement with the customer, and the customer has not fulfilled its obligations and the TDU subsequently decides to disconnect the customer, that the charges for disconnection (and reconnection) should be billed directly to the customer under the TDU contract with the Customer, rather than to the REP. The commission amends the language to prohibit charging the REP under this circumstance.

The REP Coalition commented that the requirement to send the disconnect request at least two Business Days prior to the requested date is particularly troublesome because of the potential for negative Retail Customer experience that this could cause. The REP Coalition stated that with a two Business Day lead-time between the time the disconnect order is sent and the first day that the TDU could potentially work the order, there is an increased risk that the Retail Customer pays but the pending disconnect order is not cancelled in time to prevent disconnection of service. The REP Coalition added that most TDUs schedule the day's workload at the beginning of each Business Day, and therefore the additional Business Day contemplated by the proposed rule is not particularly significant from an operations standpoint, and the only thing this requirement does is increase the risk that a Retail Customer is disconnected in error because of the length of time the TDU is holding the pending disconnect order. The REP Coalition therefore recommended that the lead-time required for a disconnect for non-pay order be reduced to one Business Day.

In reply comments, the Joint TDUs disagreed because the shorter the notice time, the greater the likelihood that the Retail Customer will be disconnected, which is always a negative Retail Customer experience. Joint TDUs commented that the fact that some Retail Customers pay during the two day notice period and avoid disconnection is a positive outcome for the Retail Customer and the TDU workload, and the REP Coalition appears to be attempting to reduce their exposure to bad debt. Joint TDUs added that there is minimal risk that the disconnect will be worked even though the Retail Customer has paid the bill no matter how many days of notice are given, as long as the REP timely sends the appropriate transaction when payment is received because any pending disconnect will be cancelled. Joint TDUs also disagreed with the REP Coalition's assertion that allowing just one day's notice for disconnects for non-pay would not be particularly significant from an operations standpoint for the TDUs because the timeframe for working the disconnects would be decreased, and therefore the number of disconnects and associated reconnects would increase because Retail Customers would have less time to pay their bills. Additionally, with two days notice, the TDU will have the flexibility to forecast workload more accurately and efficiently deal with the peak. Joint TDUs commented that the published amendments appropriately balance the need for certainty about when the disconnect order will be worked and the need of the TDU to efficiently plan and execute field work.

Commission response

The commission agrees with the Joint TDUs and understands that if the disconnection is sent and a subsequent reconnect is sent, the pending disconnection is automatically cancelled. The commission believes that with the two days notice, the TDU will have the flexibility to more accurately schedule its workload. The commission also notes that to allow maximum time for reconnect orders to be received the TDUs should not disconnect early. The commission declines to change the rule to accommodate the request of the REP Coalition.

The TDUs commented that the "Note" that was proposed for the Section on "Reconnect After DNP" reflecting the requirement that disconnection of a residential customer will not occur on a Business Day preceding a holiday is more appropriately located in this Section, and that the word "TDU" in the "Note" should be changed to "Company" to conform with terminology used elsewhere in the tariff. The TDUs added that there should be two separate charges, one applicable to a disconnect at the Meter, and the other applicable to a disconnect at a premium location, such as the weatherhead, pole, secondary box, etc. The TDUs commented that this is a distinction that is recognized in the section on Reconnect for Non-Pay, and the same difference in costs will arise for the disconnection.

Commission response

The commission will change the TDU to Company in the Note and adds the two separate charges proposed by the Joint TDUs.

Reconnect for Non-Pay Charges

The Consumers stated that they have previously opposed charges for priority reconnects, and that it appears that "Same Day Reconnect" is the new name for priority reconnects, which they believe is a discriminatory practice. The Consumers stated that if there are two Retail Customers disconnected for non-payment and they both pay their bills at the same time they should be reconnected within the same standards of timing. The Consumers argued that people who cannot afford to pay a priority fee should not have their reconnection further delayed for someone who can afford to pay an extra reconnect fee for priority scheduling, and this practice discriminates against the poor and should be prohibited. The Consumers added that the very existence of same day reconnect fees will lead some consumers to believe that they will have to wait longer if they do not pay the priority fee, even if it may not be necessary to accomplish the same day reconnect since some TDUs are on average able to perform reconnects much more quickly. The Consumers stated that having a same day reconnect is a misrepresentation to consumers that will result in consumers being charged more than they should be for reconnection services. The Consumers commented that they have no issue with offering after-hours reconnection for Retail Customers who are unable to arrange payment within the timeframe needed to be reconnected during the regular work day. The REP Coalition stated that their understanding is that it becomes more difficult for TDUs to reconnect service on the same day when orders are received later in the day, but stated that their belief that these Retail Customers should have the opportunity to request a same day/after hours reconnect if they are willing to pay the additional charge for TDUs to complete these reconnects on overtime.

The Consumers commented that once a Retail Customer pays its bill, reconnection should occur the same day and certainly within 24 hours, and that the commission should eliminate the 48 hour standard. The Consumers stated that the purpose of the standard is to make sure that all Retail Customers are protected, even the ones who pay late Friday afternoon because that is when they got paid. The Consumers argued that a standard that represents the lowest standard for the industry protects no one, and recommended standard reconnect requests received by the Company prior to 5:00 p.m. should be reconnected no later than the close of that field operational day; standard reconnect requests received between 5:00 p.m. and 7:00 p.m. should be re-

connected by noon the next field operational day; and standard reconnect requests received by Company after 7:00 p.m. should be considered received the next business day. The Consumers also recommended that "same day" be changed to "after hours" consistent with their comments. The TDUs responded stating that they do not oppose doing away with priority reconnection if the commission so chooses, but it is important that the standard service not be converted into what is in essence priority service by adopting the timeline proposed by the REP Coalition for all reconnects. The REP Coalition stated that they were in general agreement with the comments of the Consumers in regards to the commission's approach to reconnections after disconnect for non-payment, particularly the 48-hour outside limit to reconnect service. The REP Coalition stated their belief that the 48-hour provision was put in place as a backstop for Retail Customers when unpredictable conditions prevent the TDU from reconnecting service earlier.

The REP Coalition supported the commission's attempt to provide more certainty of Retail Customer reconnect times as well as a standard service offering for Same Day Reconnect, but stated that the commission's proposal does not go far enough because too much latitude is provided, particularly in instances where the TDU has received a reconnect order early enough in the day. The REP Coalition noted that the reconnect provisions contained in the Customer Protection Rules make a distinction between orders received before 2:00 p.m. and those received after that time, and require the TDU to reconnect service that day if possible, but no later than the end of the next utility field operation day. The REP Coalition stated that this provision was included to provide the TDU with flexibility to move orders to the following day only in situations such as storm conditions or unusually heavy workload that should only occur a few times per month. The REP Coalition stated that aside from those situations, the TDU should be expected to complete all reconnect orders received by 2:00 p.m. on the same day. The REP Coalition stated that they would support performance measures that would not contemplate 100% compliance 100% of the time to account for such situation. The TDUs responded that the REP Coalition was incorrect in its claims that its proposed timeline for reconnection of service after disconnect for non-pay is consistent with the Customer Protection Rules, and that it is much stricter than the current market timeline, and the timeline required in the rules. The TDUs commented that the Customer Protection Rules provide that the reconnect must be completed by the end of the next field operational day, but in no instance longer than 48 hours after the request is received, which is also the requirement in the proposed amendments. The TDUs continued, stating the REP Coalition's proposal would require the reconnect to be completed by the end of the same day if the request were received by 2:00 p.m., which would make it the priority reconnect a standard reconnect, and would greatly impact TDU operations and costs. The TDUs added that the commission fully considered the issues surrounding this timeline during the proceeding for the Customer Protection Rules, and there is no need to revisit the same questions again. In reply comments, the REP Coalition stated its belief that its proposal is a good compromise between the commission's published rule and the proposal of the Consumers.

Commission response

The commission does find it appropriate to have a distinction between a standard reconnect and a same day reconnect. There are differences in the level of service and those who are willing to pay for the faster service, should have the opportunity to pay for it. The commission agrees with the TDUs that the REP Coalition's proposal is stricter than the current Customer Protection Rules. However, the commission finds that a requirement that a reconnect order received by 2:00 PM CPT on a Business Day be completed that day will benefit customers, and does not conflict with the Customer Protection Rules. Therefore the commission agrees to make this change. The commission notes that the REPs should send reconnects as promptly as possible following the customer's payment, and re-establishment of credit, if applicable, to ensure that a customer's disconnect order is either not executed, or the customer is reconnected as promptly as possible.

The REP Coalition proposed that any order received by the TDU prior to 7:00 p.m. CPT (5:00 p.m. CPT on non-Business Days) should be worked that day because a Retail Customer who is in an emergency and is willing to pay for the assurance of having service reconnected that day should be able to do so. The REP Coalition stated that these timeframes mesh well with the timeframes in which a REP has to transmit reconnect requests, but also allow the REP the ability to set expectations with its Retail Customers as to expect service reconnection, and provides an option for Retail Customers who call later in the day the ability to have service reconnected the same day at a different rate. The TDUs responded that this proposal is unreasonable, and that indeed the 5:00 p.m. deadline contained in the published amendments is also not feasible because the TDU needs orders to be received no later than 2:00 p.m. if they are to be worked that same day. The TDUs argued that it is not possible to receive, process, dispatch, travel and execute orders upon shorter notice, particularly in rural areas where travel time can be significant; nor should it be required that such orders be worked through midnight. The TDUs also disagreed with the language proposed by the REPs that priority reconnects could be ordered for any day, including holidays and weekends, because the TDUs do not think that priority service should be available on non-Business Days. The TDUs stated that the only time standard or priority reconnects should be worked on non-Business Days is when the 48 hour requirement in the Customer Protection Rules requires it, which is consistent with the published amendment. The TDUs added that the description of this service should expressly state that the request must include the appropriate priority code, and has suggested language be added to the Rate Schedule to accomplish this.

The REP Coalition added that to address the TDU's concerns that the customer protection rule requiring reconnection not later than 48 hours after receipt would result in TDUs performing work on non-Business Days, the REP Coalition recommended language to more narrowly define the circumstances in which this charge will apply. The REP Coalition stated that this specification will allow REPs to accurately quote a reconnect price to the Retail Customer at the time the reconnect is requested.

The TDUs stated that the second sentence should be changed to reference more clearly the charge that will be applied to a reconnection performed on a day that is not a Business Day, and that the title of that charge should be "Non-Business Day Reconnect," both in this sentence and in the itemization of charges.

Commission response

The commission agrees with the TDUs that a 7:00 PM timeframe would not be practical, and therefore declines to make the change requested by the REPs. The commission does not agree to specify the method of transmission of the priority code in this tariff but notes that the tariff requires a differentiation of standard and same day reconnects. The commission does agree to

add weekend day in addition to holiday to reflect that the TDU will reconnect service on non-Business Days as well as holidays if necessary and to allow for appropriate charges for weekends and holidays.

Meter Re-Reads

The REP Coalition noted that this discretionary service does not have a corresponding performance standard to define the timeframe in which the TDU should complete the re-read and stated that it is necessary for REPs to set customer's expectations appropriately. The REP Coalition reasoned that five Business Days was a reasonable time. The TDUs stated that if this is adopted, the term "date of the request" should be changed to "receipt of request."

Commission response

The commission agrees that a re-read should be done within five days and agrees this should be effective sooner rather than in 2007. The commission agrees with the REP Coalition that this should be placed in the body of the tariff as current re-read charges should continue to apply. The commission agrees with the TDUs that the timeline should begin upon the TDU's receipt of the request.

Non-Standard Meter Installation Charges

The TDUs recommended that these services remain in the Company specific portion of Chapter 6 rather than being simplified into standardized services because they are not high volume frequently utilized services and by their very definition are "non-standard." There is a wide variety of non-standard meter equipment and new equipment is being developed, and not all equipment is available in each TDU service territory, which means that the work associated with installing these meters varies and may change and the charges should not be simplified as stated in the proposed amendments. The TDUs therefore, recommended that this entire section be deleted, or if it remains, the changes recommended by the TDUs should be adopted. The TDUs recommended language putting "standard advanced metering equipment" into lower case and removing the specification "via telephone" for information transmittal.

The REP Coalition noted that the proposed rule does not contain timelines associated with requests to install Off-Site Meter Reading, Automated Meter Reading, or IDR Equipment, and that these timelines are necessary to set Retail Customers' expectations for the completion of requested services. The REP Coalition therefore proposed the inclusion of a 30 calendar day performance standard to define the timeframe in which TDUs should complete advanced meter installation requests.

In reply comments, the TDUs reiterated their request that this not be in the standardized services, and added that there is a high degree of variation and specificity related to these services as is made clear by the provisions recently approved by the commission in the AEP TCC tariff, Docket No. 28840. The TDUs added that as technology develops in this area, any specific standards adopted as part of the rule may quickly become obsolete, hindering the Retail Customer's ability to customize its approach, which may negatively impact the Retail Customer experience. The TDUs stated that providing standard timelines for installation of this equipment makes no sense, and the work requires close coordination with the Retail Customer; construction by the Retail Customer is often required; software may need to be installed; and the work may need to be done more than 30 days in the future. The TDUs stated that the equipment would rarely be installed just on the basis of receipt of an electronic transaction from the REP without coordination with the Retail Customer, and that the timetable for completing the work will be developed based on coordination between the TDU and the Retail Customer. Therefore, the rationale that timelines are necessary so that the REP can "appropriately set customers' expectations" is faulty. The TDUs added that if a timeline is included it should be tied to the "receipt of the request or as otherwise agreed to by Company and Retail Customer" rather than the "date requested" as proposed by the REP Coalition.

Commission response

The commission believes that customers should be able to receive certain non-standard meter installations within a 30 day timeframe as proposed by the REPs, as the Customers and the REPs should have an expectation of when the service should be completed. The commission agrees with the TDUs that there will be many other types of metering services that may be available in the future and the customer should be able to receive those services as well. Therefore, the commission concludes that these basic non-standard services should remain in this tariff with a 30 day installation timeline and that each TDU should have additional Discretionary Services for other metering services that are not included in this description and as indicated in the rule adoption, timelines should be proposed for additional services when the services and rates are proposed.

Interval Data Recorder (IDR) Equipment Installation

TDUs suggested striking "access interval load data via telephone to a central location" to "transmit interval load data to a central location."

Commission response

The commission agrees with the TDUs that the transmission does not always have to be via telephone but that the communication method should be at the option of the customer having the meter installed and that the customer should not have to pay additional charges to the TDU for receiving communications in a different manner.

Service Call Charge

The REP Coalition did not understand the rationale for the distinction between outage investigations that occur during normal business hours and those that occur outside of normal business hours because TDUs are required to have staff available to respond to outages during all times of the day. The REP Coalition stated that the cost for a TDU to respond to an outage during normal business hours should not necessarily be different than the cost to respond at any other time. The TDUs argue that the cost for maintaining crews after hours is much higher and the cost of using such a crew to respond to an inside trouble call is also greater.

Commission response

The commission disagrees with the REP Coalition that there is no difference in responding to an outage call during the day or in the middle of the night as crews are generally more expensive when dispatched at night, on weekends or holidays and this associated cost should be borne by the customer who requested the service. The commission declines to make a change in the rule associated with this suggestion.

The REP Coalition furthered that if the commission is attempting to address erroneous outage calls that require the TDU to respond to calls on the customer's side, a more appropriate charg-

ing mechanism would be based on the number of erroneous calls made by the customer in a finite period of time. The TDUs do not agree with the REP Coalition proposal and stated that the cost is incurred the first time the trip occurs, just as with subsequent trips and were the costs included in base rates, all customers would bear costs that are incurred at the behest of only one customer. Further, keeping track of calls to bill on the second occurrence would be impractical and a system would have to be built to tract the calls and the results of the call and the information retained for 12 months. Additionally, the TDUs provided that the ability to tract the calls by customer as opposed to ESI ID does not exist and a manual system would have to be developed to perform this tracking at a cost that would far outweigh the value of being able to track this information.

Commission response

The commission agrees with the TDU that the costs should be billed to the customer who requested the TDU services rather than borne by all customers. There is a cost associated with the TDU visit to the premise and it should be borne by the customer. If the response is made during non-business hours, then the customer should be required to pay the additional charges associated with a non-business hour visit.

Outdoor Lighting Charges

The TDUs recommended that these charges not be included as standardized Discretionary Services, but instead remain in the Company Specific portion of the tariffs. The TDUs noted that they are not high volume/frequently utilized services, and the descriptions found in the existing TDU tariffs are far more detailed and complex that those proposed and more correctly reflect the variety of situations that are involved. The TDUs recommended that this entire section be deleted, or the title of the section should be changed to "Company-Owned Lighting Charges" because the TDU is only responsible for repairs to its own facilities, not all outdoor lighting. The REP Coalition requested that the commission reject the request to delete the section because these are some of the most important service requests from a Retail Customer's perspective because of the security concerns associated with outdoor lighting, including both guard lights and street lights.

Commission response

The commission agrees with the REPs that these services are important to the Retail Customer and that service should be performed as expected. Additionally, while the commission is not opposed to coordination, there needs to be a timeline to ensure appropriate TDU performance. Therefore, the commission declines to amend this section.

Security Lighting

The TDUs stated that this should not be included in the Standardized Discretionary Services portion of the tariff, but if retained, the title should be "Bulb and Photocell Replacement" because repairs other than bulbs and photocell replacement should be covered in the Company specific portions of Chapter 6. However, if included as a standardized service, the charge for these repairs should be "as calculated" and there should be no time-limit stated.

In reply comments, the TDUs referred to the discussion above. The commission assumes that the following is the discussion to which they were referring. The TDUs stated that if this section is not deleted, timelines should not be included because the work requires close coordination with the Retail Customer to coincide with or avoid other construction work; or it may need to be done more than 30 days in the future. The TDUs stated that work would rarely be performed just on the basis of receipt of an electronic transaction from the REP without coordination with the Retail Customer, and that the timetable for completing the work will be developed based on coordination between the TDU and the Retail Customer. Therefore, the rationale that timelines are necessary so that the REP can "appropriately set customers' expectations" is faulty. The TDUs added that they do not agree with standardizing this service, or including a timeframe in the description of the service, but if one is included it should be tied to the "receipt of the request or as otherwise agreed to by Company and Retail Customer rather than the "date requested" as proposed by the REP Coalition.

Commission response

The commission agrees with the REP Coalition that a timeline should be included for these services and make the suggested changes to the tariff.

Street Light Removal

The TDUs commented that Street Light Removal should not be included in the Standardized Discretionary Service portion of the tariff; however, if it is retained, the reference to Section 5.6.8 should be changed to a reference to Section 5.7.8. The TDUs added that the charge for this service should be "as calculated" because of the wide variation in the type of service that may be required. The TDUs gave the example that lights served by overhead conductors are less expensive to remove than lights served by underground wiring, which is more difficult to remove or cap.

In reply comments, the TDUs referred to the discussion above. The commission assumes that the following is the discussion to which they were referring. The TDUs stated that if this section is not deleted, timelines should not be included because the work requires close coordination with the Retail Customer to coincide with or avoid other construction work; or it may need to be done more than 30 days in the future. The TDUs stated that work would rarely be performed just on the basis of receipt of an electronic transaction from the REP without coordination with the Retail Customer, and that the timetable for completing the work will be developed based on coordination between the TDU and the Retail Customer. Therefore, the rationale that timelines are necessary so that the REP can "appropriately set customers' expectations" is faulty. The TDUs added that they do not agree with standardizing this service, or including a timeframe in the description of the service, but if one is included it should be tied to the "receipt of the request or as otherwise agreed to by Company and Retail Customer rather than the "date requested" as proposed by the REP Coalition.

Commission response

The commission agrees with the REP Coalition that a timeline should be included for these services and makes the suggested changes to the tariff.

Tampering

The TDUs recommend that language be added to the description of this charge, indicating that the charge will be billed to the REP who was the REP of Record at the time the tampering occurred. If the tampering occurred when there was no REP of Record, it will be billed to the Retail Customer.

Commission response

The commission agrees with the TDUs that tampering discovered while the REP is the REP of Record means that the charge has been incurred during the time the customer is being served by the REP and therefore the REP is the appropriate party to invoice.

The REP Coalition recommended that the broken meter seal charge only be applied in situations where consecutive breakages have occurred, as this is more indicative of potential tampering. The REPs offered that there have been countless times when customers have been charged for a broken meter seal when the customer maintained that there never was a seal in place. The REP Coalition maintained that if the investigation of the broken meter seal uncovers tampering, then the cost of the investigation will be included in the tampering charge. If tampering is not found, they recommended, then the customer should not be charged for the investigation, rather it should be considered a cost of doing business for a TDU. Therefore, the REP Coalition recommended a tampering charge be applied only if the meter seal is broken in two or more consecutive months.

The TDUs stated that they support the section as proposed. They stated that the REP Coalition incorrectly argued that the charge for a broken meter seal is related to tampering and the investigation. The TDUs reported that it could be the result of a repair performed by an electrician for example. The TDUs argued that the rationale for the charge is to cover the cost of replacement, regardless of why it is needed, not to cover a tampering investigation. Also, the cost is incurred when the work is performed for the first meter seal break, as well as subsequent breaks and as discussed with service calls above keeping track of meter seal breaks to bill on consecutive occurrences would be costly and impractical.

Commission response

The commission agrees with the TDUs that a broken meter seal is not the same thing as a tampering investigation. The commission also agrees that keeping track of consecutive offenses for such a small charge is not a prudent use of resources and declines to amend the tariff as proposed by the REP Coalition.

Inaccessible Meter Charge and Disconnect Charge

Joint TDUs proposed a new charge to be imposed when the TDU is unable to gain access to the Meter located on the Retail Customer's property as a result of denial of access. The REP Coalition strongly urged the commission to reject the TDUs suggested changes. The TDUs also recommended that the disconnect charge related to failure to provide access to the meter be "as calculated" rather than a set fee, because such disconnections may be complicated and the charge should vary depending on the work required to be performed.

Commission response

The commission agrees that the customer has the responsibility to provide access to the meter. The commission believes the TDUs should have the incentive to read the meter if at all possible. Instituting the inaccessible meter charge could weaken the incentive for the TDU to try to get the meter reading as they stand to benefit financially if they cannot. The commission declines to institute this charge in the rule as proposed but does agree to institute a charge for critical load customers who fail to provide access as for those customers the commission finds a charge to be an appropriate incentive. The commission agrees that a disconnection performed because of an inaccessible meter may have complications and the charge should be "as calculated."

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and PURA §39.203 which grants the commission authority to establish reasonable and comparable terms and conditions for open access on distribution facilities for all retail electric utilities offering customer choice.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 14.052 and 39.203.

§25.214. Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities.

(a) Purpose. The purpose of this section is to implement Public Utility Regulatory Act (PURA) §39.203 as it relates to the establishment of non-discriminatory terms and conditions of retail delivery service, including delivery service to a Retail Customer at transmission voltage, provided by a transmission and distribution utility (TDU), and to standardize the terms of service among TDUs. A TDU shall provide retail delivery service in accordance with the terms and conditions set forth in this section to those Retail Customers participating in the pilot project pursuant to PURA §39.104 on and after June 1, 2001, and to all Retail Customers on and after January 1, 2002. By clearly stating these terms and conditions, this section seeks to facilitate competition in the sale of electricity to Retail Customers and to ensure reliability of the delivery systems, customer safeguards, and services.

(b) Application. This section, which includes the pro-forma tariff set forth in subsection (d) of this section, governs the terms and conditions of retail delivery service by all TDUs in Texas. The terms and conditions contained herein do not apply to the provision of transmission service by non-ERCOT utilities to retail customers.

(c) Tariff. Each TDU in Texas shall file with the commission a tariff to govern its retail delivery service using the pro-forma tariff in subsection (d) of this section. The provisions of this tariff are requirements that shall be complied with and offered to all REPs and Retail Customers unless otherwise specified. TDUs may add to or modify only Chapters 2 and 6 of the tariff, reflecting individual utility characteristics and rates, in accordance with commission rules and procedures to change a tariff; however the only modifications the TDU may make to 6.1.2.1 are to insert the commission-approved rates. Additionally, in Company specific discretionary service filings, Company shall propose timelines for discretionary services to the extent applicable and practical. Chapters 1, 3, 4, and 5 of the pro-forma tariff shall be used exactly as written. These chapters can be changed only through the rulemaking process. If any provision in Chapter 2 or 6 conflicts with another provision of Chapters 1, 3, 4, and 5, the provision found in Chapters 1, 3, 4, and 5 shall apply, unless otherwise specified in Chapters 1, 3, 4, and 5.

(d) Pro-forma Retail Delivery Tariff.

(1) Tariff for Retail Delivery Service.

Figure: 16 TAC §25.214(d)(1)

(2) Compliance tariff. Compliance tariffs pursuant to this section must be filed by June 15, 2006.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 21, 2006.

TRD-200602266
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: May 11, 2006
Proposal publication date: November 18, 2005
For further information, please call: (512) 936-7223

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SUBCHAPTER O. UNBUNDLING AND MARKET POWER
DIVISION 2. INDEPENDENT ORGANIZATIONS

16 TAC §25.365

The Public Utility Commission of Texas (commission) adopts new §25.365, relating to an Independent Market Monitor for the Wholesale Electric Market in the Electric Reliability Council of Texas (ERCOT) with changes to the proposed text as published in the November 11, 2005, issue of the *Texas Register* (30 TexReg 7338).

The new rule will enable the commission to enforce wholesale market rules to assure the efficient and reliable operation of electricity markets and the reliable delivery of electricity at reasonable prices during the transition to a fully competitive electric power industry in Texas. The Texas Legislature has determined that the independent organization shall contract with an entity selected by the commission to act as the commission's wholesale market monitor to detect and prevent market manipulation strategies and recommend measures to enhance the efficiency of the wholesale market. The Legislature has directed that the commission by rule define (1) the market monitor's responsibilities, including reporting obligations and limitations; (2) the standards for funding the market monitor, including staffing requirements; (3) qualifications for personnel of the market monitor; and (4) ethical standards for the market monitor and the personnel of the market monitor. The new rule defines those standards. The new rule provides many public benefits, including the protection of customers and market entities from high prices that could result from market rule violations and market manipulations, and the protection of the developing wholesale market from potential market power abuses. Each of these benefits is important to meeting the legislative directive to protect the public interest by establishing a wholesale independent market monitor to support the role of the commission in enforcing market and commission rules.

The rule is adopted as part of the commission's efforts to establish an independent wholesale electric market monitor for the market in the ERCOT region, under Chapter 39 of the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §§11.001 - 64.158 (Vernon 1998 & Supp. 2006). PURA Chapter 39 delegated many important functions to the commission in order to "protect the public interest during the transition to and in the establishment of a fully competitive electric power industry." Among those functions were the enforcement of market rules and the prevention of market manipulations. In order to protect the public interest and to assure that the market functions efficiently, the commission adopts this rule governing the independent wholesale electric market monitor for the ERCOT market. This rule is a competition rule subject to judicial review as specified in PURA §39.001(e). This new section is adopted under Project Number 31111.

A public hearing on the proposed section was held at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Monday, January 9, 2006 at 9:30 a.m. Representatives from the Electric Reliability Council of Texas (ERCOT); Reliant Resources, Inc. (Reliant); Constellation Energy Commodities Group, Coral Power, LLC, Exelon Generation Co., LLC; FPL Energy, LLC, Suez Energy Marketing NA; and Texas Genco, LLC (collectively, Joint Commenters); TXU Generation Company LP and TXU Portfolio Management Company LP (collectively, TXU), Brazos Electric Power Cooperative (Brazos), American National Power, Inc. (ANP), GDS Associates, the Office of Public Utility Counsel (OPUC), and CenterPoint Energy Houston Electric, LLC (CenterPoint) attended the hearing and provided comments. To the extent that these comments differ from the submitted written comments, such comments are summarized herein. Following the hearing, Joint Commenters filed a concise summary of its positions discussed at the hearing supplementing the comments and reply comments it had previously filed in the project.

The commission received comments on the proposed new section from TXU, Joint Commenters, Reliant, Brazos, the City of San Antonio acting by and through the City Public Service Board of Trustees (CPS Energy), ERCOT, and East Texas Electric Cooperatives (ETEC). Reply comments were received from Joint Commenters and the Office of Public Utility Counsel (OPUC).

Summary of Comments

General Comments

Tex-La Electric Cooperative of Texas, Inc., Deep East Texas Electric Cooperative, Inc., Houston County Electric Cooperative, Inc., Cherokee County Electric Cooperative Association, and East Texas Electric Cooperative, Inc., collectively, here the East Texas Cooperatives (ETCs) expressed support for the rule, which they stated gives broad authority to the independent market monitor (IMM), and agreed that the rule is necessary to protect the public interest. The ETCs believed that the IMM should have oversight capability and investigative powers in order to accomplish its purpose. The ETCs supported a rule that gives the IMM the tools to accomplish those goals and opposed any changes to the rule that would unreasonably limit the IMM's ability to accomplish its purpose.

Joint Commenters recommended that the commission adopt procedures for the IMM similar to those for the market monitoring unit (MMU) for the PJM Interconnection (PJM), with modifications to avoid placing the IMM in an enforcement-type role prohibited by PURA.

In reply comments, OPC supported all the elements of the proposed rule. OPC believed that the rules governing the ERCOT IMM should not duplicate those found in PJM because of jurisdictional differences and distinct market characteristics.

Role of the IMM

TXU contended that the primary functions of the IMM are: (1) analyzing the conduct of particular market participants and the status of the wholesale market in general; (2) analyzing ERCOT's operations to ensure that it operates the market in an efficient and non-discriminatory manner pursuant to the ERCOT Protocols and Operating Guides; (3) determining whether its analyses support the need for a specific market intervention or require

no action at all; and (4) reporting to the commission the results of the analyses supporting specific market intervention, including making recommendations regarding possible enforcement actions against a market participant or ERCOT and changes to commission rules or ERCOT Protocols or Operating Guides.

The commission generally agrees with TXU regarding the functions of the IMM and believes the rule adequately delineates the roles and functions of the IMM. The commission notes that the statute does not have any specific provision requiring the IMM to recommend that enforcement action be undertaken, other than the IMM's duty to report violations, potential violations, or potential market manipulations. While the IMM's findings and analysis will necessarily be part of the evaluation as to whether enforcement action is warranted, the ultimate decision to initiate an enforcement proceeding and recommend the imposition of penalties resides with the executive director of the commission, and the assessment of penalties can only be done *through an order of the commission, not the IMM, pursuant to PURA §15.023. The rule that is being adopted is, for the most part, consistent with TXU's comments but includes greater detail concerning the IMM's duties, which is consistent with the commission's authority to define the IMM's responsibilities, under PURA §39.1515.*

IMM Independence and Separation of Functions Between the IMM and Commission Staff

TXU asserted that, to maintain objectivity and establish its independence, it is necessary that the IMM's role be clearly distinguished from the enforcement and policy-making role of the commission, including the commission's Wholesale Market Oversight Section. TXU asserted that the IMM is not an agent for the commission or the commission staff and should be viewed as an independent entity. TXU also asserted that the positions and interests of the IMM are not necessarily aligned with those of the commission staff.

Reliant stated that the commission should clarify that, although there is a management relationship between the two organizations, it expects the IMM to provide independent analysis and recommendations to it and its staff.

The commission agrees that the IMM should establish its independence from the market participants and ERCOT. However, while it is unquestionable that the IMM has a unique role and should conduct independent analysis and reach its own findings, and certainly is in all ways required to be independent from the parties that it monitors, the commission cannot declare that the IMM is wholly independent from the commission itself, in light of the requirements in PURA regarding the commission's oversight of and interaction with the IMM. For example, the commission is required to select the IMM, ensure that the IMM has adequate resources, establish ethical standards for the IMM, and supervise and oversee the IMM, and the commission staff is to be able to communicate freely with the IMM. The commission agrees that the IMM should provide analysis and recommendations that are independent and based solely on its expertise to the commission. The commission believes the rule as proposed adequately separates the enforcement and policymaking roles of the commission from the market monitoring and analysis functions of the IMM.

While the IMM is required to recommend changes to commission rules or the ERCOT protocols as part of its annual report, the decision to make those changes resides with the commission. Likewise, while the IMM is required to report violations, potential violations, or potential market manipulations to the commission under subsection (l)(1), the decision to recommend enforcement action and the imposition of penalties or other remedial action resides with the executive director of the commission, and the actual imposition of penalties or remedial action can only be done through commission order. For this reason, while the rule does provide that the IMM will provide testimony as part of the commission's staff case in an enforcement proceeding under subsection (d)(9), the rule does not inappropriately confer enforcement authority on the IMM, and no change to the rule is necessary.

The commission agrees with Reliant's comment that the analysis and recommendations of the IMM should be independent and based solely on the IMM's independent findings and expertise, and has further clarified the rule in this regard.

TXU stated that market participants and ERCOT should be notified if their behavior is being reported to the commission. For example, TXU referred to the market monitor for PJM, who issues a "demand letter" concurrently to the market participant and the respective public utility commission or board addressing actions the market monitor believes violate the rules and standards governing PJM; and to the New England Power Pool's Independent Market Advisor, who provides notice and an opportunity for the market participant to respond when questionable conduct is identified.

The commission disagrees with TXU that the IMM should be required to notify market participants when their behavior is being reported to the commission. The commission agrees that in order to perform its function effectively, the IMM should be permitted to engage in dialog with a market participant regarding the market participant's activities to determine whether a potential rule violation or potential market manipulation has occurred, and that, as part of those discussions, the IMM may indicate that a potential violation or market manipulation may have occurred. The commission amends subsection (e) of the rule accordingly. However, the commission does not believe that it should require the IMM to notify market participants in all instances when behavior is reported to the commission. Should the commission staff determine that a reported violation or potential violation warrants additional investigation or enforcement action, §25.503(l) of this title already provides for an opportunity for a market participant to meet with the commission staff prior to conclusion of the staff's investigation. Therefore, the commission believes adequate notice provisions are already provided for by rule.

Additionally, the commission notes that the "demand letter" currently issued by the PJM MMU, as described in TXU's example, goes beyond simply informing a PJM market participant that it is being reported. The commission views the PJM "demand letter" as an enforcement tool, as the PJM MMU has the authority to demand in that letter that a market participant cease an activity or modify a behavior, and to penalize a market participant that is not responsive. In contrast, PURA specifically prohibits the commission from delegating enforcement authority to the IMM. The commission therefore declines to add this requirement in the rule.

Confidentiality of Competitively Sensitive Information

TXU stated that §25.362(e) of this title and section 1.3 of the ERCOT Protocols set out very specific requirements for how ERCOT should address competitively sensitive and confidential information, and that those same requirements should be incorporated by specific reference in the IMM rule to expressly apply them to the IMM. TXU added that the current language of the rule is not sufficient to adequately protect confidential information be-

cause §25.362(e) and section 1.3 of the ERCOT Protocols apply only to the ISO. In fact, TXU added, the proposed rule language has little effect at all, since there are no detailed confidentiality procedures in PURA, the Substantive Rules, or the ERCOT Protocols that would apply to the IMM unless they are directly incorporated in this rule.

In reply comments, Joint Commenters agreed with TXU's comments on competitively sensitive information.

The commission agrees that the rule needs to contain provisions that adequately protect confidential or competitively sensitive information, and has modified the subsection (j)(1) of the proposed rule to clarify that the standards and procedures for handling confidential information that are contained in PURA, the ERCOT Protocols, commission rules, and other applicable law are incorporated by reference.

TXU stated that the market participant should be notified when its confidential information has been given to the commission so that it can take the necessary steps to make sure the information remains protected. In particular, information possessed by the commission is subject to Texas Public Information Act requests, and TXU believes that market participants should be informed when their information becomes subject to possible requests under the Act. In case of a formal request for confidential information, TXU would require the IMM director to address its request in writing to a market participant's designated representative. This would provide the market participant sufficient background to respond quickly and accurately to the request, and would ensure that a formal request for confidential information from the IMM is duly recognized and addressed by the market participant.

The protection requested by TXU is already provided by §552.305 of the Texas Government Code (the Texas Public Information Act). Under §552.305, a market participant whose confidential or proprietary information becomes the subject of a public information request has the right to be informed of the request within a reasonable time and the right to submit briefs to the attorney general before a decision is rendered. It is not clear from the comments how additional notice prior to the commission's receipt of information that a market participant considers confidential will provide any additional protection to the market participant. Moreover, considering the volume of potentially confidential information that will be exchanged between the IMM and the commission, sending and keeping track of such notices will pose an unnecessary administrative burden on the IMM. The commission concludes that the TPIA provides adequate protection from requests for public information and that a change in the proposed language is not necessary. The commission also concludes that requiring that the IMM make written formal requests for information that a market participant considers to be confidential is not necessary. The IMM will have to develop more detailed procedures for carrying out its responsibilities under this new rule, and this is a detail that can be addressed in such procedures. This rule protects the market participants' key interest: the protection of confidential information.

Proposed changes to individual subsections.

Joint Commenters suggested that the rule should clarify that it applies to market participants, to the IMM, and to ERCOT.

The commission is making a clarification in subsection (a) that this section also applies to the interactions between the IMM and market participants, in response to this comment.

Proposed subsection (b): Definitions

Joint Commenters requested that the proposed rule's definition of market participant in subsection (b)(3) include anyone who could benefit significantly from an outcome of a matter under the IMM authority, whether the entity participates in the wholesale market or not, and proposed to define "market participant" as: "any natural person, partnership, municipal corporation, cooperative corporation, association, government subdivision, or public or private organization that engages in any activity that is in whole or in part the subject of the ERCOT protocols, regardless of whether such entity has executed an agreement with ERCOT."

The commission finds that the definition in the proposed rule will benefit from adding Joint Commenters' language to clarify that all potential interested parties are captured by the definition. The commission therefore incorporates the proposed change as an additional definition but does not delete the previously proposed definition based on wholesale-market participation.

In proposed subsection (b)(3), (now (b)(2)), Brazos Electric suggested that the definition of "market" is essentially unlimited in scope. Brazos Electric proposed that the commission consider clarifying the definition by indicating that a market is related to the exchange of goods or services as related to the wholesale market within the ERCOT region.

In reply comments, the Office of Public Utility Council (OPC) disagreed with Brazos Electric and opposed the narrowing of the definition of the term "market." According to OPC, such narrowing is unnecessary because whenever the term "market" is used in the proposed rule, it is followed by a qualifier that makes it clear that the IMM's responsibility is geared toward a narrowly defined market.

The commission agrees with Brazos that the definition of the term "market" is broad but also agrees with OPC that a narrowing of the definition is not necessary for the purpose of this rulemaking and no additional clarification is needed. As OPC points out, the context clearly indicates that the scope of the IMM's monitoring responsibilities is ERCOT markets.

The commission has also deleted the definition "protocols" in subsection (b)(4) as the term "ERCOT protocols" is already defined in §25.5 of this title. Other conforming changes have also been made to use the term "ERCOT protocols" consistently in this section.

Proposed subsection (c)(2): Objectives of market monitoring

Proposed subsection (c)(2) sets out one of the objectives of the IMM: to "recommend measures to enhance market efficiency." ERCOT proposed to add "without compromising reliability" at the end of the subsection to clarify that the IMM recommendations are consistent with applicable standards and policies for grid reliability.

This paragraph implements PURA §39.1515(a) and (h), which require the IMM to recommend measures to enhance the efficiency of the wholesale market, and to provide recommendations to the commission and ERCOT on changes to the market design to correct flaws. The commission believes the IMM should have broad latitude in making these recommendations, because the commission and ERCOT are ultimately responsible for conducting an evaluation and deciding whether or not the IMM's recommended changes should be made. The commission agrees with ERCOT that it is necessary to evaluate the reliability impacts of the recommended changes, but believes that the processes that the commission and ERCOT will use to evaluate

the IMM's recommendations will adequately consider those impacts, and therefore declines to make the change recommended by ERCOT.

Proposed subsection (d): Responsibilities of the IMM

ERCOT stated that proposed subsection (d)(4), which requires the IMM to "evaluate market participants' and ERCOT's compliance with the protocols and the effectiveness of ERCOT's system operations," could be interpreted as an extremely broad and open-ended mandate. ERCOT proposed amending this subsection to limit the scope of this requirement to the objectives of the IMM, as defined in subsection (c).

The commission disagrees with ERCOT that the requirement to monitor ERCOT's compliance with the protocols is too broad, but agrees that the description of the IMM's responsibility to evaluate the effectiveness of ERCOT's system operations may be modified by adding specific examples to provide more clarity. The commission therefore modifies the rule to specifically indicate that IMM responsibilities include assessing the effectiveness of ERCOT's management of the energy, ancillary service capacity, and congestion rights markets operated by ERCOT, and to evaluate the effectiveness of congestion management by ERCOT. These examples are set out in a new subsection (d)(5).

ERCOT commented that the term "harmonize" in proposed subsection (d)(6) could be subject to a wide range of interpretations by various parties. ERCOT considered its role in ensuring the reliability of the electric grid to be its overriding primary responsibility. ERCOT supported the idea of identifying potential areas of improvement to market efficiency, but recommended striking the language related to harmonizing that task with reliability standards.

The commission agrees with ERCOT and modifies the rule accordingly. This provision is now subsection (d)(7).

Proposed subsection (d)(8): IMM testimony

TXU proposed revising the rule language in proposed subsection (d)(8) referring to IMM testimony, to clarify that when the IMM offers testimony in a commission proceeding, it should do so in support of the analysis and investigation it has conducted.

CPS Energy commented that it is unquestionable that the IMM's responsibilities encompass providing expert testimony. However, CPS Energy believed that proposed subsection (d)(8) implies that the IMM will offer testimony based on the desires of commission staff rather than testify fully consistent with the results of the IMM's independent investigation. CPS Energy suggested revising the rule to describe the IMM's testimony, as follows:

(8) Providing expert testimony services in enforcement proceedings initiated by the commission or other commission proceedings.

In reply comments, Joint Commenters disagreed with CPS and added that CPS cited no authority for stating that the IMM's responsibilities unquestionably encompass providing expert testimony.

While the commission agrees with TXU and CPS that the IMM's primary role in an enforcement proceeding will be to present and defend its independent analysis, it may also be the case that the IMM will need to, among other things, respond to positions of other parties or discuss general issues of market manipulation or compliance as part of the enforcement proceeding. The commission agrees with the revision recommended by CPS to make it clear that enforcement proceedings are initiated by the commission. The commission is also modifying the rule along the lines of TXU's suggested revision, to reinforce the idea that the IMM's testimony is to be based on its findings, analysis and expertise:

(9) Providing expert testimony relating to the IMM's independent analysis, findings and expertise, as part of the commission staff's case in enforcement proceedings initiated by the executive director in accordance with §22.246 of this title (relating to Administrative Penalties) or other commission proceedings.

Joint Commenters stated that proposed subsection (d)(8) referring to the IMM testifying on behalf of PUC staff, should be eliminated, or in the alternative should be amended to say that if the IMM were to testify, it would be at the request and under the control of the presiding officer.

In reply comments, OPC disagreed with Joint Commenters that proposed subsection (d)(8) should be deleted. OPC believed that the commission would benefit from hearing the testimony of the IMM in any contested case proceeding. OPC further disagreed with Joint Commenters' argument that PURA would not permit the IMM to testify. OPC believed that PURA §39.1515 gives the commission broad authority to define the manner in which the IMM would support the commission in its enforcement role. Referring to the two IMM functions described in PURA §39.1515 as detecting and preventing market manipulations, OPC contended that testimony by the IMM would fulfill such functions because it could prevent market manipulation. Lastly OPC did not see that PURA required the strict separation of functions that Joint Commenters recommended between the commission and the commission staff: OPC believed that PURA §39.1515 and §§39.155 - 39.157, in giving the commission broad authority in preventing improper market manipulation, allowed the commission to delegate any aspect of that responsibility to commission staff.

The commission agrees with OPC that it is proper to specify that part of the IMM's duties is to testify in enforcement and other commission proceedings and disagrees with Joint Commenters' suggestion that subsection (d)(8) of the proposed rule, now (d)(9), should be deleted, or that the IMM should only testify if summoned to do so by the Presiding Officer. The commission generally agrees with OPC that the commission will benefit from the IMM's expert testimony in contested proceedings and does not see any reason to limit IMM testimony in the manner suggested by Joint Commenters. Moreover, the commission has specific authority to define the IMM's responsibilities.

The commission believes that, as a general matter, the IMM's independent expertise, analysis, and conclusions are appropriate to have as part of the commission staff's case in an enforcement proceeding, even though there may be certain wholesale electric market enforcement proceedings where the IMM's testimony is not needed. For example, the IMM's testimony may not be needed in enforcement cases where the violation at issue is a relatively straightforward matter of non-compliance with a specific protocol or rule requirement, but will almost certainly be needed in cases involving market manipulation, market power abuse, or other similar matters. Cases involving market manipulation and market power abuse are likely to be complex matters relating to the operation of the wholesale electric market and the operation of generating and transmission systems in the markets, for which the IMM's expertise will be invaluable. The broad purpose of PURA §39.1515 is to put such expertise at the commission's disposal in preventing market abuses. Accordingly, the

commission believes that it is appropriate to specify testifying as a necessary duty of the IMM. The commission declines to delete subsection (d)(8) as proposed by Joint Commenters. A more detailed response to each of the specific points raised by Joint Commenters follows.

Joint Commenters offered the following specific reasons in support of their conclusion that the IMM should not testify on behalf of the commission staff:

(1) It is contrary to PURA §39.1515, which distinguishes between the commission and the commission staff with respect to the IMM and establishes that the IMM is the market monitor for the commission, not the commission staff.

The statute does differentiate between the commission and its staff, but the commission does not believe that the fact that the IMM is the market monitor for the commission, as opposed to commission staff, prohibits the IMM from providing testimony as part of the staff case in an enforcement proceeding. Accordingly, the commission disagrees with Joint Commenters and concludes that the IMM may present its findings and analysis in an enforcement proceeding as part of the IMM's responsibilities.

(2) Being a witness for the commission staff is not an IMM function listed in PURA §39.1515(d). To the contrary, PURA §39.1515(d) dictates that the IMM is not to have any enforcement authority.

The commission disagrees that requiring the IMM to provide testimony is inconsistent with PURA §39.1515(d), which requires the commission to define the IMM's monitoring and reporting responsibilities by rule. As the IMM will be conducting the day-to-day monitoring of the market and reporting violations, potential violations, and potential market manipulations to the commission, it is logical and efficient to provide for the IMM to present its conclusions as to the occurrence of a violation or market manipulation as part of an enforcement case, and is within the commission's discretion to require it to do so.

(3) Testifying on behalf of the commission staff would require that the IMM adopt an enforcement-like role not contemplated by PURA §39.1515(d).

The commission disagrees that having IMM as witness in an enforcement proceeding confers enforcement authority on the IMM. The authority to initiate an enforcement proceeding and recommend penalties resides with the executive director of the commission, and the actual imposition of penalties or other remedies can only be done through commission order. Nothing in the rule alters or delegates this authority to the IMM, and providing for the IMM to present its findings and analysis as part of the commission staff's case is within the commission's discretion.

(4) IMM testimony for the staff would raise ex-parte concerns, and would impair the IMM's ability to perform its most critical statutory function, which is to report directly to the commission. According to Joint Commenters, under the Administrative Procedures Act (APA), the IMM would be able to communicate with the commission and act as the commission's advisory staff if it was not participating in the proceedings, but would not be able to do so if it was testifying for the staff.

The commission disagrees that having the IMM participate in an enforcement case will prevent the IMM from performing its statutory function of reporting to the commission. The sequence of events leading to an enforcement action will permit the IMM to report to the commission before an enforcement action is initiated. The rule requires an immediate report to the commission of potential market manipulations, which in these circumstances could be a report either to the staff or the commissioners. An enforcement case would be initiated only some time later, after the staff has analyzed reports from the IMM and the executive director has concluded that an enforcement action is warranted. The ex parte restrictions do not exist unless and until a contested enforcement case is filed, which will occur well after the IMM's report of the violations or potential violations that led to the enforcement case. As stated earlier, it is logical and efficient to require the IMM to present and defend its analysis and findings as to the occurrence of a violation in the enforcement case. Additionally, once an enforcement case is filed, ex parte restrictions only apply to issues of fact or law in that case. Therefore, the IMM will not be precluded from discussing other matters, such as subsequent market events, with the commissioners.

(5) While PURA §39.1515(f) states that the IMM is to report directly to the commission, subsection (g) states that the IMM may communicate freely with commission staff on any matter without restriction. Such communication should sufficiently enable the staff to conduct its enforcement function using what it learns from the IMM.

Joint Commenters' proposal would result in an inefficient use of resources, as the IMM's analysis would have to be entirely duplicated by the staff's testimony in the enforcement case. Joint Commenters' argument is also inconsistent with point (4) above, where Joint Commenters argue that the IMM should act in an advisory role in enforcement proceedings, as they would then be precluded from communicating with the commission's legal and analytical staff prosecuting the case. It is within the commission's discretion to indicate an expectation that IMM personnel will participate in the commission staff's case on contested matters.

(6) IMM testimony would impede the confidentiality of IMM discussions with the commissioners. The APA specifies that contested case proceedings are subject to the Texas Rule of Evidence (TRE), and that discovery in such proceedings is subject to the Texas Rules of Civil Procedures (TRCP). Therefore, any information used by the IMM as the basis of his or her testimony, including discussions with individual commissioners, even if privileged, would be discoverable.

The commission disagrees with Joint Commenters that any privileged discussions with the commissioners would be discoverable. Commission Procedural Rule §22.141(a) defines the scope of discovery and provides that "[p]arties may obtain discovery regarding any matter, *not privileged* or exempted under the Texas Rules of Civil Evidence, the Texas Rules of Civil Procedure, or other law or rule, that is relevant to the subject matter in the proceeding." (Emphasis added.) Moreover, in commission hearings the entry of a protective order addresses the handling of confidential, non-privileged documents. Clearly, current laws and rules provide adequate protection for any privileged information.

(7) IMM testimony for the staff would raise fairness concerns. If the IMM agreed with the market participant, the law would erect barriers to discovering that. In contrast, if the IMM agreed with the staff, that opinion could be admitted in evidence.

The commission disagrees that having the IMM present its analysis regarding the occurrence of a violation in an enforcement case raises fairness issues. The commission staff is required to support its case with adequate evidence, of which the findings

and analysis of the IMM is likely to be a critical component. That evidence can be tested, examined, and rebutted by opposing parties to the proceeding. To the extent that the IMM provides testimony as part of the commission staff's case, the IMM will be subject to discovery and available for cross-examination at the hearing if the respondent-market participant disagrees with the conclusions reached by the IMM. If the IMM does not provide testimony, then the testimony of other staff witnesses that support the staff's recommendations will be subject to discovery and available for cross-examination if the market participant disagrees with the conclusions.

In the limited cases where the IMM is not providing testimony, the commission does not believe, as a general matter, that it would be appropriate to shield any opinions or analysis conducted by the IMM on the specific matter at issue in the enforcement case, recognizing that those opinions and analyses may be of limited relevance because the staff is not relying on them as the basis of the enforcement proceeding. The commission expects that reasonable access to the IMM will be provided, but cautions that parties should not attempt to abuse this access and that this access would not extend to compelling the IMM to conduct new or additional analysis.

(8) If staff used the IMM as a consulting expert, as opposed to a testifying expert, his or her opinions and knowledge of the facts, even if favorable to the market participant, would not be discoverable. Proposed subsection (d)(8) would also raise other privileges, such as the attorney work product and the attorney-client privileges, that would also add protection from discovery and would be unfair if the IMM were to agree with the market participant and disagree with the staff.

As discussed earlier, the commission believes that the IMM's findings and analysis is an important element of the executive director's decision to initiate an enforcement proceeding and will be given great weight in that decision. The commission does not believe having the IMM provide testimony in an enforcement case raises any fairness issues, as the market participants would have the opportunity to cross-examine the IMM and/or the commission staff providing testimony in an enforcement case, and the commission expects that a full view of the IMM's analysis, including any potentially exculpatory findings, will be discoverable by market participants. The IMM's purpose, consistent with PURA, should be to help the commission establish the most efficient, well-functioning wholesale electric market possible; the purpose is not to seek enforcement actions or penalties for their own sake.

(9) IMM testimony would impair the IMM's ability to discuss all on-going monitoring matters in an effective and timely way with every market participant; and it would distract the IMM from performing its unique statutory functions.

The commission disagrees that the IMM's role in an enforcement case impairs its ability to conduct on-going monitoring. Joint Commenters' concern appears to assume that as a result of its expert witness duties either the IMM will be effectively understaffed or that the IMM will not be able to effectively and efficiently manage its office and other duties. The commission is required by PURA to assure that the IMM has the resources to perform all of its functions timely and effectively. Moreover, the commission does not believe that the IMM's involvement in a pending contested case would prevent the IMM from performing its functions.

In reply comments, Joint Commenters stated that, whether or not the IMM testifies, the rule should state that the IMM, unless required by law, may not communicate non-public information it receives from a commissioner or staff that pertains to an investigation or anticipated investigation or enforcement proceeding.

The commission agrees with Joint Commenters that the IMM may not communicate any confidential information or any information that pertains to an investigation, anticipated investigation, or enforcement proceeding to the public. Therefore the commission modifies subsection (j)(2) to clarify that the IMM is not to communicate such information to any other entity in addition to the entities already listed in that subsection.

In reply comments, OPC suggested an amendment to proposed subsection (d)(9) to read: "Maintaining a market oversight website to share market information *and as much of the analysis as possible regarding investigations with the public while maintaining all confidential information redacted."*

The commission believes that OPC's suggestion is too broad and that it could be excessively burdensome for the IMM to report its analyses on the website. The commission prefers to allow the IMM to decide the contents of its website in consultation with the commission or commission staff at a later date. This will permit the IMM to maximize the effectiveness of its website, consistent with its duties under the statute and this rule and with its resources. Therefore the commission declines to include the suggested change.

Proposed subsection (d)(11): Performing any duties requested by the commission

In proposed subsection (d)(11), to the sentence "performing any additional duties required by the Commission" Joint Commenters would add: "within the scope of PURA §39.1515 or this section." OPC would add "consistent with applicable state law." Brazos Electric stated that this provision is too broad in allowing the commission to add any additional duties it requires and recommended that the commission delete this subsection. To the extent that new activities do not fall within those already listed within paragraphs (1) - (10), Brazos contended, the commission should allow market participants the opportunity to review and comment on such new or added responsibilities. In reply comments, OPC in part concurred with Brazos, stating that any change in IMM responsibilities should proceed through the normal rulemaking process before the commission and allow for public comments and participation.

The commission partially agrees with Joint Commenters and adds the phrase "within the scope of PURA §39.1515," but not the phrase "or this section" to proposed subsection (d)(11). Joint Commenters correctly note that "additional duties" may not exceed the scope of what the Legislature intended in enacting PURA §39.1515. Therefore, adding the phrase "or this section" will add nothing of substance to the meaning of the sentence. The commission disagrees with Brazos Electric's and OPC's suggestion that it should attempt to anticipate every possible duty the IMM will have to perform before the IMM actually assumes its responsibilities in the marketplace and declines to modify the rule.

OPC suggested the addition of a paragraph to proposed subsection (d) to state that "the IMM should keep the market informed as to the status of the wholesale market and any problems identified. This should be done through monthly reports to the ERCOT Technical Advisory Committee (TAC) and the Board of Directors."

The commission agrees with OPC that the IMM should keep the market informed periodically as to the status of the wholesale market and any important problems identified in the market, and modifies proposed subsection (k) relating to reporting requirements to specify as much. The commission does not believe it necessary to codify a specific frequency of reporting to TAC and the Board of Directors in the rule and prefers to leave that level of detail for the IMM to decide, in consultation with the commission.

Proposed subsection (e): Authority of the IMM

In proposed subsection (e)(2), Joint Commenters suggested adding: "that the commission would have authority to require" to the sentence "The IMM has the authority to require submission of any information and data it considers necessary to fulfill its monitoring and investigative responsibilities by ERCOT and by market participants."

Brazos Electric expressed concerns that the proposed rule would allow the IMM too broad authority and asked that the commission narrow the scope of the IMM's authority. In addition, Brazos Electric recommended the commission add a provision that would require that information deemed confidential by a market participant be kept confidential by the IMM.

In reply comments, OPC opposed Brazos Electric on both issues. In OPC's view, the term "any information or data" is sufficiently narrowed by the subsequent qualifying language regarding information and data "the IMM considers necessary to fulfill its monitoring and investigating responsibilities." OPC further noted that the commission's Procedural Rules address a party's designation and handling of confidential material sufficiently to not warrant additional limitations in this rule.

CPS Energy noted that the proposed rule oversteps the commission's statutory authority in subsection (e)(2) in that the law only authorizes the IMM to require production of data from ERCOT and does not extend that authority to production of data from market participants. CPS Energy also believed that the information required of the market participants was likely to be trade secret, confidential, proprietary, and/or competitively sensitive and the production of such information is likely to be burdensome and therefore the entity authorized to obtain the information, the commission, should formally request the information. CPS offered the following revision to the rule language:

(2) The IMM has the authority to require submission of any information and data it considers necessary to fulfill its monitoring and investigative responsibilities by ERCOT. If the IMM requires information from a market participant that is not available from ERCOT and the market participant notifies the IMM of its objection to the provision or the timing of the provision of such information in whole or in part, the IMM shall petition the commission to order the market participant to submit the necessary information or data to the IMM, unless alternative arrangements for the provision of such information are reached that are agreeable to the IMM and the market participant.

In reply comments, OPC opposed CPS Energy's argument, stating that PURA §39.1515(b) and (d) allow for the commission to grant broad authority to the IMM. OPC opined that this broad grant of authority allows for the commission to require such production of material from market participants.

ERCOT stated that the language provides no flexibility for cases where the information may not be readily available. Accordingly, ERCOT proposed qualifying language that would allow ERCOT or market participants to "make every reasonable effort" to comply with the IMM's requests for information and data. In reply comments, OPC supported the limitation suggested by ERCOT.

Joint Commenters suggested adding a "due diligence" provision, similar to the due diligence language in §25.503(f)(8) of this title, stating that market participants should not be held to a higher standard regarding information they provide to the IMM than information they provide to the commission or ERCOT.

The commission disagrees with CPS Energy and Brazos Electric that proposed subsection (e)(2) overstates the authority of the IMM in allowing it to require submission of information by the market participants. PURA §39.1515(d) makes the "commission responsible for ensuring that the market monitor has the *resources*, expertise, *and authority* to monitor the wholesale electric market effectively." (Emphasis added.) The commission finds that in order to effectively monitor the wholesale market, the IMM must have authority to access the information and records of market participants in addition to the records and information available at ERCOT, since ERCOT may not have all the records and information about a market participant that are necessary to establish that a potential rule violation or market manipulation occurred.

The commission agrees with ERCOT and OPC that there may be times when exceptional circumstances may prevent ERCOT or a market participant from promptly complying with a request for information and data. Those instances are to be expected and the commission believes imposing a requirement that compliance be *reasonably* prompt is not necessary and may actually provide a focus for further disagreement or litigation. Thus the commission believes that the changes suggested by Joint Commenters, Brazos Electric, and CPS for added market participant flexibility in responding to IMM requests for information and data are not necessary.

The commission does not agree with Brazos Electric's suggested provision that information deemed confidential by a market participant be kept confidential by the IMM. The commission agrees with OPC that this provision is unnecessary given the confidentiality protection afforded market participant information elsewhere in the proposed rule and in the commission's rules. The commission therefore declines to make the proposed change.

The commission does not agree with CPS Energy that the IMM should be required to petition the commission to obtain confidential market participant information not available from ERCOT. The rule already provides sufficient protection of the market participants' confidential information, and the commission believes that adding an additional process is unnecessary and burdensome and will impede the IMM's ability to investigate potential market manipulations and rule violations in a timely manner. The commission declines to add this change to the rule.

In proposed subsection (e)(3), Joint Commenters suggested changing "name a contact" to "name one or more points of contact." Joint Commenters further suggested that the point of contact may be a manned station such as the market participant's "real time desk."

The commission agrees with Joint Commenters that one or more points of contact may be necessary and added that language to the rule. However, because communications with the market participants are critical to the success of the IMM, the commission will leave the details concerning "point of contact" decisions to the discretion of the IMM. The commission believes it suffi-

cient for the rule simply to require that the points of contact be sufficiently knowledgeable to answer any questions the IMM may have on any operational issues or market activities.

In proposed subsection (g)(1), Brazos Electric recommended the term "fee" be replaced by the term "rate" as PURA §39.151 uses the term "rate." ERCOT proposed adding a sentence confirming that all IMM-related expenses shall be presumed reasonable in order to provide clarity for future fee proceedings.

The commission agrees with Brazos Electric and changes the rule accordingly. The commission declines to adopt the change proposed by ERCOT. Evaluation of the reasonableness of the IMM's expenses will be accomplished through the contract administration process, and the appropriate recovery of those expenses is best addressed in ERCOT's fee proceedings. As such, no change to the rule is required.

In proposed subsection (g)(4), Joint Commenters suggested specifying: ERCOT shall directly assign "IMM costs" or "costs arising from the IMM function" to the IMM whenever possible.

The commission agrees with Joint Commenters, because adding the proposed language will clarify the intent of the provision. The commission changed the rule accordingly.

In proposed subsection (h)(1), Joint Commenters proposed to add that the director of the IMM shall be qualified to perform one or more market monitoring functions described in subsection (c), to address the concern that the IMM could be an administrator type who is not qualified to perform any market monitoring function.

The commission agrees with Joint Commenters that the Director of the IMM will most likely have such expertise but does not agree that this level of specificity regarding the expertise of the IMM Director is necessary in the rule and declines to make the suggested change.

Proposed subsection (i): Ethics standards governing the IMM director and staff.

In proposed subsection (i)(3), CPS Energy urged that the rule language expressly state what restrictions would apply and recommended that the rule language track PURA §12.155 such that the rule imposes no greater post-employment restriction on the IMM and its employees than those imposed on commissioners and commission staff.

The commission agrees with CPS Energy that any prospective employee should know what post-employment restrictions apply before accepting employment. CPS Energy appears to argue that any retroactive application of post-employment restrictions may be difficult to enforce. To that end, the commission intends that post-employment restrictions, if any, will be a condition of employment, the details of which will be negotiated and described explicitly in any employment agreement with the IMM or IMM employee. The commission believes that prescribing these restrictions in advance may make it more difficult to negotiate an agreement with the IMM for the services.

Proposed subsection (j)(2): Limitation on IMM communication with market participants

Joint Commenters stated that the language of proposed subsection (j)(2), "unless otherwise notified by the commission legal staff, the IMM may not communicate with a market participant ... concerning a particular subject matter once the commission legal staff notifies the IMM that the subject matter is, or may be, the subject of an investigation or enforcement proceeding" could prevent the IMM from communicating with a market participant who must be involved in identifying, correcting or mitigating a problem, and preventing future recurrences of a problem. Joint Commenters recommended procedures that would allow the ERCOT IMM to function similarly to the MMU in the PJM market, who according to Joint Commenters, notifies FERC immediately only upon determining that a *significant* problem has occurred, and otherwise resolves less important issues with market participants.

Joint Commenters claimed that the proposed subsection (j)(2) places the IMM in a data-gathering and reporting role, rather than a monitoring and prevention role as required by PURA §39.1515(a); that it could be interpreted as prohibiting the IMM from communicating with market participants to investigate and informally solve or limit the consequences of the problem; and that it would impede the IMM's statutory monitoring duties. Joint Commenters emphasized the need for the IMM to independently and informally engage in communication necessary to monitor the wholesale market effectively.

The commission notes that differences in the requirements that PURA places on the IMM and the requirements placed on other market monitoring units (MMU) by FERC necessitate differences in the manner of operations between the IMM and other MMUs. As such, the commission will not simply import the PJM MMU functions and operating procedures to the IMM. PURA requires the IMM to report all violations, potential violations, or potential market manipulations immediately to the commission, and not only those items that the IMM concludes are "significant."

The commission, however, agrees that the comments received from Joint Commenters and others have helped to improve the proposed rule. The commission deletes the "or may be" language from subsection (j)(2) to establish a bright line for the moment at which the IMM and market participants should cease communication regarding a particular contested issue. With respect to deciding the contours of the "particular subject matter" on which communication with market participants will be forbidden, commission legal staff shall strive to define contested issues as narrowly as is practical, so as to interfere as little as possible with the IMM's ability to continue with its monitoring functions. In the same vein, the commission notes that subsection (j)(2) is not a blanket restriction on communications between the IMM and a market participant; it merely requires that communications on certain constested issues occur in a more structured manner with approval of the commission's legal staff once an investigation begins. The commission envisions that in the case of an ongoing investigation or enforcement proceeding, commission staff and the IMM would work together to determine the appropriate scope and timing of additional communication with the market participant to meet the objectives of preserving the confidentiality of an enforcement investigation and mitigating the consequences of any ongoing violation, and also minimizing interference with the IMM's other duties. In addition, the commission agrees to modify proposed subsection (e) to clarify that the IMM has the authority to communicate informally with market participants to obtain information it needs to establish whether a potential rule violation or market manipulation has occurred, and to inform the market participant that its actions may violate market or commission rules.

ERCOT expressed concern that the proposed language in subsection (j)(2) may restrict ERCOT staff's ability to support the IMM's investigations. ERCOT recommended allowing its staff to

communicate, in compliance with confidentiality requirements, to the extent reasonably necessary to pursue investigations.

The commission believes that the rule sufficiently provides for structured communications between the IMM and other entities, including ERCOT staff, with approval of the commission's legal staff once an investigation or enforcement proceeding is initiated. The commission therefore declines to make the recommended change to the rule.

In proposed subsection (j)(2), Joint Commenters proposed adding language that would require that negotiations with a market participant to resolve an issue remain confidential from the public but be disclosed to the commission.

The commission disagrees with Joint Commenters. The Legislature did not give the commission authority to create a new class of confidential information or exceptions to the Public Information Act. To the extent any information exchanged during discussions between a market participant and the IMM is already protected under existing law, the negotiations or parts thereof may be entitled to confidential protection. The commission declines to amend the rule.

Proposed subsection (k): Reporting Requirement

In reply comments, OPC suggested amending proposed subsection (k) to read as follows: "Reporting Requirement. The IMM shall prepare and submit to the commission the following reports. *Such reports shall be posted to its website. These reports shall be redacted where appropriate."*

The commission agrees that there will be a high level of interest in the reports generated by the IMM and intends to make that information readily available. However, the commission declines to place a specific requirement in this rule, but will determine the most efficient and appropriate manner to ensure the reports are available to the public.

ERCOT was concerned that the language in proposed subsection (k)(2) might be too broad and recommended more clearly limiting the scope of the reporting requirement to the objectives and responsibilities set out in subsections (c) and (d).

The commission disagrees with ERCOT and believes that the language requiring the IMM to report on its assessment of the efficiency of ERCOT's management of the balancing energy market, ancillary services, and congestion rights markets, and on its evaluation of the effectiveness of congestion management by ERCOT is clear and specific, and that it is consistent with proposed subsection (d)(4), which requires the IMM to monitor and evaluate ERCOT's compliance with the protocols, and with new subsection (d)(5), which specifically describes which areas of ERCOT's system operations should be monitored.

Proposed subsection (l): Communication between the IMM and the commission

Joint Commenters stated that the language of proposed subsection (l)(1) (now subsection (l)(2)(A)) goes beyond the statutory intent in requiring that the IMM report to the commission "abnormal bids or offers, abnormal operational or market behavior by either a market participant or ERCOT" and proposed to delete this language. Joint Commenters explained that an abnormality can result from a simple mistake or miscommunication that, if corrected in time, would be of no consequence. Joint Commenters gave the example of the PJM MMU who, if a trader accidentally hits the wrong key when entering a bid, would simply call the trader to clarify whether that was the intent. Joint Commenters added that reporting to the commission at that level of detail is not a type of reporting listed in the statute and would be a waste of resources.

In reply comments, OPC supported the language proposed in the rule and opposed the changes proposed by Joint Commenters. OPC opined that the proposed change would amount to restricting communication between the IMM and the commission.

The commission believes that subsection (l) as proposed is unclear as to the various reports and communication between the IMM and commission. The commission amends subsection (l) in the following ways:

(1) The language taken from PURA reiterating that the IMM may communicate with commission staff without restriction is now paragraph (1).

(2) Paragraph (2)(A) now requires the immediate reporting of violations, potential violations, or potential market manipulations, including market power abuse directly to the commission. PURA requires these items to be reported directly and immediately to the commission, even if the underlying cause was a mistake. A decision to initiate enforcement action will take into account whether the cause of the violation was an obvious mistake. Abnormal bids, offers, or behavior that the IMM finds are or might be a violation or market manipulation is necessarily subsumed within this requirement.

(3) A new paragraph (2)(B) has been added, which now requires periodic reports on abnormal bids or offers or abnormal market behavior where the IMM has concluded that the bid or behavior is a not violation, potential violation, or market manipulation. The commission agrees with Joint Commenters that an abnormality could be due to an honest mistake and further notes that bids, offers, or behavior that are judged to be "abnormal" may not in fact be violations or market manipulations. However, as part of the commission's oversight of the IMM and the wholesale electric market, it is important for the IMM to periodically report on the events that it has investigated or noticed in the market. This reporting is not required by PURA to be immediate, and the commission believes it important to distinguish this report from reports of violations, potential violations or market manipulation;

(4) former paragraphs (2) - (4) have been renumbered accordingly; and

(5) paragraph (5) has been deleted as it is duplicative of new paragraph (2)(A).

TXU stated that the IMM should have both the discretion and authority to approach market participants and ERCOT to directly question them regarding their activities and immediately inquire with a market participant or ERCOT, if the IMM observes anomalous market performance issues or non-conformance to ERCOT Protocols or Operating Guides. TXU added that the IMM should perform a thorough and complete investigation of circumstances to determine that intervention is warranted, before referring a market participant to the commission for enforcement.

Brazos Electric recommended that the commission modify proposed subsection (l)(5) to require that the IMM refer instances of possible market manipulation, market power abuses, and violation of commission rules or ERCOT protocols to the commission only after the IMM has made its own investigation to determine if the activity of a market participant is appropriate for the commission's review, to preclude the commission's time and resources from being wasted.

In reply comments, OPC believed that the commission should be informed as soon as possible of any abnormal activity. OPC opposed Brazos Electric's proposal that would require the IMM to decide whether information gathered during an investigation is appropriate for the commission to review. OPC preferred that the commission make that decision.

The commission agrees with TXU that the IMM should be able, at its discretion, to question market participants or ERCOT whenever the IMM observes anomalous market events or non-conformance to ERCOT Protocols to obtain information about the causes of such events and about the activities of a market participant surrounding the events. As discussed previously, the commission adds a new subsection (e)(2) to clarify that the IMM has such authority.

The commission agrees with OPC and declines to make the changes suggested by TXU and Brazos Electric regarding referrals to the commission. The commission believes that as soon as the IMM concludes that a violation or potential violation has occurred, it is bound by PURA to report it to the commission, even if the IMM has not yet fully completed its investigation.

Subsection (l)(6): Additional IMM responsibilities and authority

Joint Commenters suggested adding a new subsection (l)(6) that would better mirror the authority given the PJM MMU in the PJM Market Monitoring Plan and PURA §39.1515(f). This addition, Joint Commenters explained, is necessary to effectuate PURA §39.1515(d), which requires that the commission ensure that the IMM has "the authority necessary to monitor the wholesale electric market effectively." Joint Commenters' proposed the following added language:

The IMM may take the following additional actions, to the extent it deems necessary, as a result of its monitoring activities:

(A) Engage in discussions to bring issues concerning ERCOT operating rules, standards, procedures, or practices to the attention of market participants and attempt to resolve informally compliance or other issues with market participants.

(B) Recommend to the commission modifications to any commission or ERCOT rules, standards, practices or procedures.

(C) Through a letter, request a market participant(s) to discontinue actions that the IMM believes violate any commission or ERCOT rules, standards, practices or procedures. The IMM shall provide such letters to the commission, subject to the protection of confidential, proprietary, and commercially sensitive information.

(D) If unable to achieve sufficient responsive action on matters through informal discussions or letter, and if and as appropriate and necessary, bring matters to the attention of the commission, except that the IMM immediately shall report directly to the commission any potential market manipulation and any discovered or potential violations of commission rules or rules of the independent organization.

(E) With the approval of the commission, make appropriate regulatory filings to address design flaws, structural problems, compliance, market power, or other issues, and make such recommendations as the IMM shall deem appropriate.

The commission notes that the PJM Market Monitoring Plan referred to by Joint Commenters is undergoing revisions following FERC's 2005 Policy Statement on Market Monitoring Units. Under the newly proposed changes to the PJM Market Monitoring Plan, several of the actions Joint Commenters are proposing to add to the ERCOT IMM rule are being modified to reflect an increased FERC investigative and enforcement role and a decreased MMU role when it is determined that a potential violation has occurred. In addition, it appears that MMUs under FERC jurisdiction continue to have some enforcement authority, unlike the authority granted the IMM under PURA §39.1515. As such, it is inappropriate to import elements of the PJM MMU Market Monitoring Plan into the ERCOT IMM.

Regarding Joint Commenters' proposed new subsection (l)(6)(A), the commission believes that the ERCOT IMM's role regarding compliance issues is limited by the statutory prohibition against the commission delegating to the IMM any enforcement authority and the statutory requirement to keep the commission's policymaking responsibilities separate from the responsibilities of the IMM. As discussed previously, the commission concurs that the IMM should be free to discuss behavior that it believes may violate commission rules or the protocols with market participants as the IMM is conducting its investigation, but does not envision that the ERCOT IMM will engage in negotiations with a market participant to resolve issues that constitute potential violations, or any other corrective activities, as such activities go beyond the IMM's statutory monitoring function, are not listed in PURA §39.1515, and could be construed as a delegation of enforcement authority to the IMM.

Regarding Joint Commenters' proposed subsection (l)(6)(B), the commission agrees that making recommendations for measures to enhance market efficiency and methods to correct market design flaws it has identified is consistent with the IMM's statutory mandate. Therefore the commission agrees to add a new subsection (d)(12) to specify that making such recommendations is a responsibility of the IMM.

Regarding Joint Commenters' proposed subsections (l)(6)(C) and (D), the commission believes that the Joint Commenters' proposed language would inappropriately delegate enforcement authority to the ERCOT IMM, and declines to adopt these changes.

Regarding Joint Commenters' proposed subsection (l)(6)(E), it is unclear what regulatory filings the IMM would be making beyond those currently required by subsections (k) and (l). To the extent the commission reviews the IMM's annual report and concludes that changes to the commission's rules or the ERCOT protocols should be made, as provided by PURA §39.1515(h), the commission will determine at that time the role for the IMM in evaluating such changes.

Subsection (m): ERCOT responsibilities and support role.

Brazos Electric suggested that for clarity the phrase "full access to its operations centers" be revised to "full access to ERCOT's operations center."

The commission agrees with Brazos Electric and modifies the rule accordingly.

ERCOT proposed changes to proposed subsection (m) such that the IMM's access to ERCOT would be enabled through procedures and interfaces developed by ERCOT and the IMM in a consultative process.

The commission agrees with ERCOT and modifies the rule accordingly.

ERCOT stated that it can meet the requirement under proposed subsection (m)(1), allowing the IMM to access electronic infor-

mation, under normal operating circumstances, but not in the event of a failure of the relevant information technology (IT) systems. ERCOT recommended that the commission make an exception to the rare case when an IT system failure might prohibit "near real time" replication of data by allowing ERCOT to replicate the data as expeditiously as possible.

The commission agrees with ERCOT and modifies the rule accordingly.

In proposed subsection (m)(3) that allows the IMM to review and propose changes to the catalogs of information and data and data collection verification criteria, ERCOT recommended additional language requiring that commission staff concur with any system changes, and that the changes be assigned to ERCOT's project priority list.

The commission agrees with ERCOT that system changes may be needed in order for the IMM to perform its functions in an optimal manner. However, the commission declines to amend the rule as recommended by ERCOT with respect to how those changes should be implemented. The commission envisions that the commission, ERCOT and the IMM will work cooperatively to appropriately prioritize the IMM's needs with other ERCOT projects.

All comments, including any not specifically discussed herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

This section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction and specifically §39.1515, which requires that the commission select an entity that will contract with ERCOT to act as the commission's wholesale electric market monitor to detect and prevent market manipulation strategies and recommend measures to enhance the efficiency of the wholesale market and requires that the commission adopt rules relating to an independent market monitor.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §39.1515.

§25.365. Independent Market Monitor.

(a) Purpose. The purpose of this section is to define the responsibilities and authority of the independent market monitor (IMM) for the ERCOT wholesale markets, establish the standards for funding the IMM, specify the staffing requirements and qualifications for the IMM, and establish ethics standards for the IMM. This section also specifies the relationship of the IMM to the commission, to ERCOT, and to market participants. The IMM shall operate under the commission's supervision and oversight, but the IMM shall offer independent analysis to the commission to assist in making judgments in the public interest.

(b) Definitions. The following words and terms when used in this section shall have the following meaning, unless the context indicates otherwise:

(1) Independent Market Monitor (IMM)--Depending on the context, the office of the IMM or the director of the IMM and its staff.

(2) Market--The course of commercial activity by which the exchange of goods or services is effected. As used in this section, the term may refer to an entire market or a portion of a market.

(3) Market participant--Any person or entity participating in the power region's wholesale markets, or engaging in any activity that is in whole or in part the subject of the ERCOT protocols, regardless of whether the person or entity has executed an agreement with ERCOT. This definition includes, but is not limited to, a load-serving entity (including a municipally-owned utility and an electric cooperative), a retail electric provider, a qualified scheduling entity, a power marketer, a transmission and distribution utility, a power generation company, a qualifying facility, an exempt wholesale generator, a load acting as a resource, and any entity conducting planning, scheduling, or operating activities on behalf of such market participants.

(c) Objectives of market monitoring. The IMM shall monitor wholesale market activities so as to:

(1) Detect and prevent market manipulation strategies and market power abuses; and

(2) Evaluate the operations of the wholesale market and the current market rules and proposed changes to the market rules, and recommend measures to enhance market efficiency.

(d) Responsibilities of the IMM. The IMM shall gather and analyze information and data as needed for its market monitoring activities. The duties and responsibilities of the IMM may include:

(1) Monitoring all markets in the power region for energy, capacity services, and congestion revenue rights, and the ERCOT protocols and related procedures and practices that affect supply, demand, and the efficient functioning of such markets;

(2) Developing and regularly monitoring market screens and indices to identify abnormal events in the power region's wholesale markets;

(3) Analyzing events that fail the screens and other abnormal activities and market events, using computer simulation and advanced quantitative tools as necessary;

(4) Developing and regularly monitoring performance measures to evaluate market participants' and ERCOT's compliance with the ERCOT protocols and operating guides;

(5) Assessing the effectiveness of ERCOT's management of the energy, ancillary capacity services, and congestion rights markets operated by ERCOT, and evaluating the effectiveness of congestion management by ERCOT;

(6) Conducting market power tests and other analyses related to market power determination;

(7) Analyzing the ERCOT protocols and other market rules and proposed changes to those rules to identify opportunities for strategic manipulation and other economic inefficiencies, as well as potential areas of improvement;

(8) Conducting investigations of specific market events;

(9) Providing expert testimony services relating to the IMM's independent analysis, findings, and expertise, as part of the commission staff's case in enforcement proceedings initiated by the executive director in accordance with §22.246 of this title (relating to Administrative Penalties) or other commission proceedings;

(10) Maintaining a market oversight website to share market information with the public;

(11) Preparing market monitoring reports as required under subsection (k) of this section;

(12) Recommending to the commission measures to enhance the efficiency of the wholesale market and methods to correct market design flaws it has identified; and

(13) Performing any additional duties required by the commission within the scope of the Public Utility Regulatory Act §39.1515.

(e) Authority of the IMM.

(1) The IMM has the authority to conduct monitoring, analysis, reporting, and related activities but has no enforcement authority.

(2) The IMM has the authority to question a market participant about activities that may violate commission rules or ERCOT protocols or may be potential market manipulations. The IMM may inform a market participant that its activities may be in violation of commission rules or ERCOT protocols or operating guides, subject to the restrictions established by subsection (j)(2) of this section.

(3) The IMM has the authority to require submission of any information and data it considers necessary to fulfill its monitoring and investigative responsibilities by ERCOT and by market participants. Market participants and ERCOT shall provide complete, accurate, and timely responses to all IMM requests for documents, data, information, and other materials.

(4) The IMM may require that each market participant designate one or more points of contact that can answer questions the IMM may have regarding a market participant's operations or market activities.

(f) Selection of the IMM. ERCOT and the commission shall contract with an entity selected by the commission to act as the commission's wholesale market monitor. The IMM shall be established as an office independent from ERCOT, and is not subject to the supervision of ERCOT with respect to its monitoring and investigative activities.

(g) Funding of the IMM. The budget and expenditures of the IMM are subject to commission supervision and oversight. Financial controls and reporting procedures shall be implemented by the IMM and ERCOT to ensure that expenditures are consistent with the budget that was approved by the commission, and with this section.

(1) ERCOT shall fund the operations of the IMM using money from the rate authorized by PURA §39.151.

(2) The funding of the IMM shall be sufficient to ensure that the IMM has the resources and expertise necessary to monitor the wholesale electric market effectively, as determined by the commission.

(3) ERCOT shall maintain separate accounts of expenditures in support of the IMM.

(4) ERCOT shall directly assign costs arising from the IMM function to the IMM whenever possible. To the extent overhead and shared expenses cannot be directly assigned, ERCOT shall allocate such expenses to the IMM based on appropriate cost causation factors. ERCOT shall maintain all records and work papers necessary to substantiate all direct charges and allocations to the IMM.

(h) Staffing requirements and qualification of IMM director and staff.

(1) The director of the IMM shall have the qualifications necessary to oversee performance of the duties and responsibilities in subsection (c) of this section. The staff of the IMM shall have the qualifications needed to perform the market monitoring functions in subsection (c) of this section. The IMM director and staff shall be subject to background security checks as determined by the commission.

(2) The staff of the IMM shall collectively possess a set of technical skills necessary to perform market monitoring functions, which typically includes economics, with a focus on market analysis and market competitiveness; power engineering; statistics and programming; and modeling, with a focus on optimization modeling.

(i) Ethics standards governing the IMM director and staff.

(1) During the period of a person's service with the IMM, the IMM director and an IMM employee shall not:

(A) have a professional or financial interest in a market participant or an affiliate of a market participant; or own shares in a company that provides consulting services to a market participant;

(B) serve as an officer, director, partner, owner, employee, attorney, or consultant for ERCOT or a market participant or an affiliate of a market participant;

(C) directly or indirectly own or control securities in a market participant, an affiliate of a market participant, or direct competitor of a market participant or affiliate, except that it is not a violation of this rule if the IMM director or an IMM employee indirectly owns an interest in a retirement system, institution or fund that in the normal course of business invests in diverse securities independently of the control of the IMM director or employee; or

(D) accept a gift, gratuity, or entertainment from ERCOT, a market participant, affiliate of a market participant, or an employee or agent of a market participant or affiliate of a market participant.

(2) The IMM director or an IMM employee shall not directly or indirectly solicit, request from, suggest, or recommend to a market participant or affiliate of a market participant, or an employee or agent of a market participant or affiliate of a market participant, the employment of a person by a market participant or affiliate.

(3) The commission may impose post employment restrictions for the IMM and its employees.

(j) Confidentiality standards governing the IMM director and staff.

(1) The IMM shall protect confidential information and data in accordance with the confidentiality standards established in PURA, the ERCOT protocols, commission rules, and other applicable laws. The requirements related to the level of protection to be afforded information protected by these laws and rules are incorporated in this section.

(2) Unless otherwise notified by the commission legal staff, the IMM may not communicate with a market participant or with an ERCOT board member, officer, or employee, or with any other entity concerning a particular subject matter once the commission legal staff notifies the IMM that the subject matter is the subject of an investigation or enforcement proceeding.

(k) Reporting requirement. All reports prepared by the IMM shall reflect the IMM's independent analysis, findings, and expertise. The IMM shall provide periodic updates to market participants regarding the operation of the ERCOT wholesale market. In addition, the IMM shall prepare and submit to the commission the following reports:

(1) Daily, monthly, and quarterly reports on prices and congestion;

(2) An annual report on the state of the market, which will include an assessment of the competitiveness of the market; an assessment of the efficiency of ERCOT's management of the balancing energy, ancillary services, and congestion rights markets; an evaluation

of the effectiveness of congestion management by ERCOT; an evaluation of whether there are inappropriate incentives, flaws, inefficiencies, and opportunities for manipulation in the market design; and any recommendations for improving the market design; and

(3) Periodic or special reports on market conditions or specific events as directed by the commission.

(l) Communication between the IMM and the commission.

(1) The personnel of the IMM may communicate with commission staff on any matter without restriction.

(2) The IMM shall:

(A) Immediately report directly to the commission any potential market manipulations, including market power abuse, and any discovered or potential violations of commission rules or ERCOT protocols or operating guides;

(B) Periodically report abnormal bids, offers, operational activities, and market behavior that have not been reported in accordance with paragraph (1) of this subsection or subsection (k) of this section.

(C) Regularly communicate with the commission and commission staff, and keep the commission updated regarding its activities, findings, and observations;

(D) Coordinate with the commission to identify priorities; and

(E) Coordinate with the commission to assess the resources and methods for monitoring the wholesale market effectively, including consulting needs.

(m) ERCOT's responsibilities and support role. ERCOT and the IMM shall jointly develop procedures and interfaces to ensure that the IMM director and staff have full access to ERCOT's operations centers, staff, and records relating to operations, settlement, and reliability. ERCOT shall designate liaisons to facilitate communications with the IMM on ERCOT's operations and information technology.

(1) ERCOT shall develop and operate an information system to collect and to store data required by the ERCOT protocols, and shall provide adequate communication equipment and necessary software packages to enable the IMM to establish electronic access to the information system and to facilitate the development and application of quantitative tools necessary for the market monitoring function. Data from ERCOT's source systems must be capable of being replicated in near real time and available for query by the IMM until data are archived and archived data are accessible for high-speed information searches. When an IT system failure prohibits "near real time" replication of data, ERCOT shall replicate the data as expeditiously as possible. Data archives must be designed to accommodate remote access by the IMM and the commission staff at any time.

(2) On an ongoing basis, ERCOT shall implement necessary procedures for the accurate collection and storage of data in the data archives and accurate communication of those data for use by the commission staff and the IMM.

(3) The IMM may review the catalogs describing information and data, and may review data collection verification criteria developed by ERCOT. The IMM may propose changes, additions, or deletions to the catalogs and criteria to facilitate the market monitoring function. In so doing, the IMM may require database items or evaluation criteria for inclusion in the pertinent catalogs.

(4) ERCOT shall establish procedures to ensure that the IMM may access all data maintained by ERCOT relating to operations, settlements, and reliability.

(5) ERCOT may provide administrative support and goods and services to the IMM, such as office space, payroll, and related services, and information technology support.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 21, 2006.

TRD-200602265
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: May 11, 2006
Proposal publication date: November 11, 2005
For further information, please call: (512) 936-7223

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.306

The Comptroller of Public Accounts adopts an amendment to §3.306, concerning sales of mobile offices, portable buildings, prefabricated buildings, and ready-built homes, with changes to the proposed text as published in the November 18, 2005, issue of the *Texas Register* (30 TexReg 7691).

The adopted amendments implement legislative changes by the 70th Legislature, Second Called Session, that made delivery charges taxable as part of the sale of tangible personal property, including a portable building, whether the delivery charge is separately stated. The amendments also implement changes by the 73rd Legislature that made mobile offices subject to the limited sales and use tax instead of motor vehicle sales and use tax. New subsection (a)(1) is added, and the remaining paragraphs of subsection (a) are renumbered accordingly. New subsections (b)(1) and (b)(2) are added, and the former subsection (b)(2) is deleted. Non-substantive changes are made for clarity.

We received a comment from the Texas Motor Transportation Association that the amendments as drafted in subsections (b)(1) and (b)(2) might be interpreted to mean that delivery charges by for-hire motor carriers are subject to sales and use tax. To address the concern, clarifying language was added to these subsections to indicate that only delivery charges charged by the seller of a mobile office or portable building are taxable. Third-party delivery charges are not subject to sales and use tax under current law.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code Chapter 151.

§3.306. Sales of Mobile Offices, Portable Buildings, Prefabricated Buildings, and Ready-Built Homes.

(a) Definitions. The following words and terms when used in this section shall have the following meanings, unless the context clearly indicates otherwise.

(1) Mobile Office--A trailer designed to be used as an office, sales outlet, or work place.

(2) Portable building--A self-contained transportable structure that does not require attachment to a foundation or to realty in order to be functional. An example of a portable building is a tool shed.

(3) Prefabricated building--A structure, not designed to be a residential dwelling, built at a location other than its permanent site, and that is later transported in one or more sections and affixed to realty.

(4) Ready-built home--A structure that does not bear a label or decal issued by the Texas Department of Licensing and Regulation or the U.S. Department of Housing and Urban Development, but that is designed to be a residential dwelling constructed precut, partially assembled, or fabricated in whole or in part at a location other than the home site and later transported in one or more sections and assembled on a permanent foundation.

(5) The terms mobile home, ready-built home, prefabricated building, and portable building do not include a house trailer, as defined in and subject to the provisions of Texas Tax Code, Chapter 152, or a manufactured home, as defined in and subject to the provisions of Texas Tax Code, Chapter 158. See §3.72 of this title (relating to Farm Machines, Timber Machines, and Trailers) and §3.481 of this title (relating to Imposition and Collection of Tax).

(b) Application of the sales tax.

(1) A sale of a mobile office is a taxable sale of tangible personal property. Sales tax is due on the total sales price charged by the seller, including delivery charges.

(2) A sale of a portable building is a taxable sale of tangible personal property. Sales tax is due on the total sales price charged by the seller, including delivery charges.

(3) A contract to sell a prefabricated building or a ready-built home is considered a contract for an improvement to realty when the seller is required to build, transport, and affix the structure to a permanent site. See §3.347 of this title (relating to Improvements to Realty). If the contract requires the seller to perform services such as preparing the foundation, plumbing, sewer hookup, septic tank preparation, supporting, blocking, or leveling, the seller's sales tax responsibilities are determined by whether the contract separates charges for materials from charges for labor. See §3.291 of this title (relating to Contractors).

(4) The sale of a ready-built home or a prefabricated building that is not at the time of sale affixed to its permanent site is a taxable sale of tangible personal property if sold to a person responsible for affixing the structure to realty.

(5) A sale of a structure that is affixed to realty is nonetheless a taxable sale of tangible personal property if the purchaser is obligated to remove the structure from its site.

(6) An "in-place" sale of items such as fixtures, machinery, and equipment is considered a sale of tangible personal property if the seller:

(A) is a lessee of the real estate or building to which the items are affixed; and

(B) has the present right to remove the items either as trade fixtures or under the express terms of the lease. Sales tax is due on that portion of the total consideration allocable to the in-place items without regard to the fact of their physical attachment to real property.

(c) Parts and accessories added to manufactured housing by the retailer. Limited sales or use tax is due on parts or accessories installed by the retailer in a manufactured home.

(1) If the retailer sells the home for a lump sum amount that includes both the home and parts, the retailer should not collect limited sales or use tax on the lump sum charge. The retailer must pay limited sales or use tax on the parts at the time of purchase.

(2) If the retailer separates the charge to the customer into one charge for the home and a separate charge for the additional parts, the retailer must collect limited sales tax on the amount charged for the parts. The retailer may issue a resale certificate in lieu of tax when purchasing the parts.

(3) If a third party sells and installs the items, the installer's sales tax responsibilities are determined by whether the contract separates charges for materials from charges for labor. See paragraphs (1) and (2) of this subsection.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 18, 2006.

TRD-200602213
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: May 8, 2006
Proposal publication date: November 18, 2005
For further information, please call: (512) 475-0387

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 705. ADULT PROTECTIVE SERVICES

SUBCHAPTER K. TRAINING AND EDUCATION

40 TAC §705.5101

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), new §705.5101, without changes to the proposed text published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 696).

The justification for the new section is to ensure that actual case examples investigated by APS staff are incorporated into APS training as mandated by Senate Bill (S.B.) 6, 79th Legislature, Regular Session, 2005.

The new section will function by ensuring that APS staff will have a better understanding of the different types of APS cases investigated, thereby increasing the quality of services provided to vulnerable adults.

No comments were received regarding adoption of the new section.

The new section is adopted under Human Resources Code (HRC), §40.0505 and Government Code, §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC, §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §40.035, as amended by §2.03 of Senate Bill 6, 79th Legislature, Regular Session, 2005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 19, 2006.

TRD-200602249
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: June 1, 2006
Proposal publication date: February 3, 2006
For further information, please call: (512) 438-3437

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Agency Rule Review Plan

State Office of Risk Management

Title 28, Part 4

TRD-200602270
Filed: April 24, 2006

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IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of April 14, 2006, through April 20, 2006. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on April 26, 2006. The public comment period for these projects will close at 5:00 p.m. on May 26, 2006.

FEDERAL AGENCY ACTIONS:

Applicant: Zinke & Trumbo, Inc.; Location: The project is located approximately 1 mile southeast of the FM 2917 and FM 2004 intersection in Brazoria County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Hoskins Mound, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 293047; Northing: 3233168. Project Description: The applicant proposes to construct a 2.81-acre temporary drill site that incorporates an older drilling site and portion of an old road. The 2.81 acres, including the older drilling site and portion of an old road meets the criteria for a jurisdictional wetland. A 350' x 350' ring levee will be created using approximately 830 cubic yards of material excavated from borrow ditches inside the levee. Wooden boards will be used as temporary fill for the pad and a 12' x 846' access road (0.23 acre) and for a 90 degree turning wing (0.03 acre), which will be constructed within adjacent wetlands at the road intersection approximately 846 feet north of the proposed pad. If the proposed well is unsuccessful, all temporary fill, including the ring levee and wooden boards, will be removed and the site will be restored to pre-construction elevations and contours. All temporary fill (boards and drill site ring levee) will be in place approximately 160 days. Also, if the proposed well is productive, approximately 1300 cubic yards of caliche or rock and 320 cubic yards of native material for a retaining levee (total 1620 cubic yards) will be placed within 0.89 acre of adjacent wetlands for the following: 1) a permanent 165' x 165' pad (0.625 acre), 2) an access road (0.23 acre) on adjacent wetlands between the pad and existing caliche road, and 3) a 90 degree turning wing (0.03 acre). A four-inch sales pipeline will be constructed in uplands between the road and existing ditch. The pipeline will travel a distance of approximately 3,400 feet and terminate at a new tank battery site (uplands). Fill for the project will be obtained from the closest commercial gravel pit. As mitigation, the applicant proposes to remove tanks, pipe, and miscellaneous junk from an old abandoned tank battery site (1.65 acres) approximately 3,200 feet northwest of the proposed well pad and restore the entire site to the elevation of existing wetlands within the proposed mitigation area. CCC Project No.: 06-0248-F1; Type of Application: U.S.A.C.E. permit application #24039 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200602317

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: April 26, 2006

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Comptroller of Public Accounts

Certification of the Average Taxable Price of Gas and Oil

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined that the average taxable price of crude oil for reporting period March 2006, as required by Tax Code, §202.058, is $57.83 per barrel for the three-month period beginning on December 1, 2005, and ending February 28, 2006. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of March 2006, from a qualified Low-Producing Oil Lease, is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined that the average taxable price of gas for reporting period March 2006, as required by Tax Code, §201.059, is $8.62 per mcf for the three-month period beginning on December 1, 2005, and ending February 28, 2006. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of March 2006, from a qualified Low-Producing Well, is not eligible for exemption from the natural gas production tax imposed by Tax Code, Chapter 201.

Inquiries should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P. O Box 13528, Austin, Texas 78711-3528.

TRD-200602248

Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Filed: April 19, 2006

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Notice of Request for Proposals

Pursuant to Chapters 403, 2155, 2156, and 2305 §§2155.001, 2156.121, and 2305.037 of the Texas Government Code, the Comptroller of Public Accounts (Comptroller), State Energy Conservation Office (SECO), announces the issuance of its Request for Proposals (RFP #175p) from qualified, independent firms and institutions to develop and provide a Teacher Education Training and Energy Outreach Program (Services). One or more successful respondents will assist the Comptroller in developing and providing a teacher education and energy outreach program and related services, as directed by the Comptroller. The Comptroller reserves the right to award one or more contracts under this RFP. The successful respondent(s), if any, will be expected to begin performance of the contract(s), if any, awarded under this RFP on or about June 15, 2006.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 East 17th Street, ROOM G-24, Austin, Texas 78774 (Issuing Office), telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on or after Friday, May 5, 2006, after 10:00 a.m., Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the complete RFP available electronically on the Texas Marketplace on or after Friday, May 5, 2006, 10:00 a.m. (CZT).

All written inquiries, questions, and Non-Mandatory Letters of Intent to propose must be received in the Issuing Office prior to 2 p.m. (CZT) on Friday, May 19, 2006. Prospective respondents are encouraged to fax Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. The responses to questions and other information pertaining to this procurement will be posted on May 22, 2006, or as soon thereafter as practical, on the Texas Marketplace at: http://www.marketplace.state.tx.us. Non-mandatory letters of intent and questions received after the deadline will not be considered; respondents are solely responsible for verifying timely receipt in the Issuing Office of Letters of Intent and Questions.

Closing Date: Proposals must be received in the Issuing Office at the location specified above no later than 2 p.m. (CZT), on Friday, May 26, 2006. Proposals received in the Issuing Office after this time and date will not be considered; respondents are solely responsible for verifying timely receipt of Proposals in the Issuing Office.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. The Comptroller will make the final decision. The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller shall pay for no costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events is as follows:

Issuance of RFP--May 5, 2006;

Non-Mandatory Letters of Intent and Questions Due--May 19, 2006, 2 p.m. CZT;

Official Questions and Responses posted--May 22, 2006 (or as soon thereafter as practical);

Proposals Due--May 26, 2006, 2 p.m. CZT;

Contract Execution--June 15, 2006, or as soon thereafter as practical;

Commencement of Project Activities--June 15, 2006.

TRD-200602271
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: April 24, 2006

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009 of the Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/01/06 - 05/07/06 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/01/06 - 05/07/06 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005[3] for the period of 05/01/06 - 05/31/06 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The monthly ceiling as prescribed by §303.005 for the period of 05/01/06 - 05/31/06 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

[3] For variable rate commercial transactions only.

TRD-200602309
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: April 25, 2006

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Deep East Texas Local Workforce Development Board

Public Notice

The Deep East Texas Local Workforce Development Board, Inc. dba WorkForce Solutions Deep East Texas issues this public notice that the draft of its strategic and operational plan for Fiscal Years 2007 - 2008 is available for public review and comment.

WorkForce Solutions Deep East Texas is responsible for the implementation of workforce development programs in the following 12 counties: Angelina, Houston, Jasper, Nacogdoches, Newton, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, and Tyler.

The plan includes the Board's mission, goals and objectives; a labor market analysis, plans for employer involvement, elements of system operation including service delivery, partners, structure, and performance; information regarding the alignment to the state workforce plan; public comments; and priority of service.

The draft plan is available on the WorkForce Solutions Deep East Texas Internet site http://www.detwork.org; or may be requested by telephone (936) 639-8898 or in person at 539 South Chestnut, Suite 300, Lufkin, Texas 75901.

The public comment period begins on June 1, 2006 and the deadline for receipt of comments is 5:00 p.m. on June 30, 2006. Public comments must be submitted in writing to the following postal address: 539 South Chestnut, Suite 300, Lufkin, Texas 75901, faxed to the following number: (936) 633-7491, or e-mailed to the following individual: Marilyn Hartsook at marilyn.hartsook@twc.state.tx.us. Comments will be incorporated as part of the Board's Plan. For more information, call Marilyn Hartsook at (936) 639-8898.

Equal/Employment Opportunity Programs. Auxiliary Aids/Services for Disabled upon Request. TX Relay: English 1-800-735-2989 Spanish 1-800-662-4954 or 711

TRD-200602262
Marilyn Hartsook
Planner
Deep East Texas Local Workforce Development Board
Filed: April 21, 2006

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East Texas Council of Governments

Request for Proposals for Operating Plans for Programs under Title III of the Older Americans Act to Provide Senior Nutrition Services in the ETCOG Region

Notice is given that the East Texas Area Agency on Aging, a program of the East Texas Council of Governments (ETCOG) is soliciting information, in the form of this Request for Proposals (RFP), to provide senior nutrition services.

The East Texas Area Agency on Aging is designated by the Texas Department of Aging and Disability Services to coordinate services, in fourteen counties, for persons in East Texas who are 60 or older, with an emphasis on frail, minority, rural, and low-income elderly.

It is anticipated services rendered will take place over a three-year period (2007, 2008, and 2009).

Persons or organizations wanting to receive a Request for Proposal document should inquire by letter, fax, or e-mail to the East Texas Council of Governments, 3800 Stone Road, Kilgore, Texas 75662, Attention: Claude Andrews. The fax number for ETCOG is (903) 984-4482. The e-mail address is Claude.Andrews@twc.state.tx.us. Questions regarding the RFP process can be addressed by calling (903) 984-8641, extension 214.

If you wish to respond, the due date for this RFP is June 16, 2006.

TRD-200602259
Glynn Knight
Executive Director
East Texas Council of Governments
Filed: April 20, 2006

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Texas Commission on Environmental Quality

Invitation to Comment on the Draft April 2006 Update to the Water Quality Management Plan

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the draft April 2006 Update to the Water Quality Management Plan for the State of Texas (draft WQMP update).

The Water Quality Management Plan (WQMP) is developed and promulgated in accordance with the requirements of the federal Clean Water Act, §208. The draft WQMP update includes projected effluent limits of indicated domestic dischargers useful for water quality management planning in future permit actions. Once the commission certifies a WQMP update, the update is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission. The draft WQMP update may contain service area populations for listed wastewater treatment facilities and designated management agency information.

A copy of the draft April 2006 WQMP update may be found on the commission's Web site located at *http://www.tceq.state.tx.us/nav/eq/eq_wqmp.html*. A copy of the draft may also be viewed at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

Written comments on the draft WQMP update may be submitted to Nancy Vignali, Texas Commission on Environmental Quality, Water Quality Division, MC 150, P. O. Box 13087, Austin, Texas 78711-3087. Comments may also be faxed to (512) 239-4420, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be submitted no later than 5:00 p.m. on June 5, 2006. For further information or questions, please contact Ms. Vignali at (512) 239-1303 or by e-mail at *nvignali@tceq.state.tx.us*.

TRD-200602305
Stephanie Bergeron Perdue
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: April 25, 2006

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Notice of District Petition

Notices Mailed April 21, 2006

TCEQ Internal Control No. 03102006-D08; Aro Partners (Petitioner) filed a petition for the creation of Harris County Municipal Utility District No. 457 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 TAC Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are no lien holders on the property to be included in the proposed District; (3) the proposed District will contain approximately 634.31 acres located in Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas; and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2005-829, effective July 5, 2005, the City of Houston, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain, and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water, all as more particularly de-

scribed in an engineer's report filed simultaneously with the filing of the petition; and (4) purchase, construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises and parks and recreational facilities consistent with the purposes for which the District is created. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project; and from the information available at the time, the cost of the project is estimated to be approximately $45,300,000.

TCEQ Internal Control No. 02162006-D02; Hannover Estates, Ltd. (Petitioner) filed a petition for the creation of Montgomery County Municipal Utility District No. 96 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 TAC Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are no lien holders on the property to be included in the proposed District; (3) the proposed District will contain approximately 285.543 acres located in Montgomery County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2005-1326, effective December 13, 2005, the City of Houston, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, improve, extend, maintain, and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition; and (4) purchase, construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is created and permitted under State law. The petition also states that the proposed District may: (1) finance one or more facilities designed or utilized to perform fire-fighting services and (2) purchase interests in land and construct, acquire, improve, extend, maintain, and operate works and improvements for the purpose of providing parks and recreational facilities According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project; and from the information available at the time, the cost of the project is estimated to be approximately $33,950,000.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on this petition if a written hearing request is filed within 30 days after the newspaper publication of this notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P. O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team at (512) 239-4691. Si desea información en Español, puede llamar al (800) 687-4040. General information regarding TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200602321
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 26, 2006

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 5, 2006**. The commission will consider any written comments received; and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P. O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 5, 2006**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the commission in **writing**.

(1) COMPANY: Esperanza Carrasco dba El Pabellon; DOCKET NUMBER: 2004-0402-PST-E; TCEQ ID NUMBER: RN102429362; LOCATION: Highway 67 and Harrington, Presidio County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(a)(1)(A) and Texas Water Code

(TWC), §26.3475(c)(1), by failing to have a release detection method capable of detecting a release from any portion of the underground storage tanks (USTs) which contain regulated substances; 30 TAC §334.8(c)(5)(C), by failing to permanently tag, label, or mark the USTs with an identification number listed on the UST registration and self-certification form; 30 TAC §334.8(c)(5)(A)(i), by failing to make available a valid current TCEQ Fuel Delivery Certificate to a common carrier prior to receiving fuel deliveries from April 1 - October 22, 2003; 30 TAC §334.50(d)(1)(B)(ii) and TWC, §26.3475(c)(1), by failing to reconcile the inventory control records on a monthly basis which are sufficiently accurate to detect a release as small as the sum of 1% of the total substance flow-through for the month plus 130 gallons; PENALTY: $56,500; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(2) COMPANY: Jesus Jorge Flores dba Corner Store; DOCKET NUMBER: 2004-1232-PST-E; TCEQ ID NUMBERS: 71235 and RN102225448; LOCATION: Mile 6 1/2 West and Mile 9 North, Weslaco, Hidalgo County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of a petroleum UST; PENALTY: $1,050; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(3) COMPANY: Larry D. Lindsey dba Absolutely Foreign Auto Parts; DOCKET NUMBER: 2005-1102-WQ-E; TCEQ ID NUMBER: RN102955630; LOCATION: 10418 Mykawa Road, Houston, Harris County, Texas; TYPE OF FACILITY: salvage yard; RULES VIOLATED: 30 TAC §281.25(a)(4), Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR050000 Part III., Section A.2., and 40 Code of Federal Regulations (CFR), §122.26(c), by failing to update the source water protection programs team member list; 30 TAC §281.25(a)(4), TPDES General Permit Number TXR050000 Part III., Section A.3.(c), and 40 CFR §122.26(c), by failing to conduct a non-storm water investigation within 90 days of filing a notice of intent for permit coverage; 30 TAC §281.25(a)(4), TPDES General Permit Number TXR050000 Part III., Section A.5.(f), and 40 CFR §122.26(c), by failing to conduct annual employee training in 2001, 2002, 2003, and 2004; 30 TAC §281.25(a)(4), TPDES General Permit Number TXR050000 Part III., Section A.4.(b), and 40 CFR §122.26(c), by failing to adequately develop a narrative description of all activities that could potentially be expected to contribute pollutants to storm water; 30 TAC §281.25(a)(4), TPDES General Permit Number TXR050000 Part III., Section A.4.(c)(11), and 40 CFR §122.26(c), by failing to record a significant spill on the site map; 30 TAC §281.25(a)(4), TPDES General Permit Number TXR050000 Part III., Section A.5.(g), and 40 CFR §122.26(c), by failing to conduct and document quarterly site inspections in all four quarters of 2003 and 2004; 30 TAC §281.25(a)(4), TPDES General Permit Number TXR050000 Part III., Section A.5.(h), and 40 CFR §122.26(c), by failing to conduct and document quarterly visual monitoring of the storm water outfall from January to March 2005, and in all four quarters of 2003 and 2004; TWC, §26.121(a), and TPDES General Permit Number TXR050000, Part V., Section M.3., by failing to dispose of fluids in accordance with all applicable state and federal regulations; 30 TAC §281.25(a)(4), TPDES General Permit Number TXR050000 Part III., Section A.7.(b), and 40 CFR §122.26(c), by failing to conduct the annual comprehensive site evaluation in 2001, 2002, 2003, and 2004; 30 TAC §281.25(a)(4), TPDES General Permit Number TXR050000 Part III., Section D.1.(c) and D.2.(c), and 40 CFR §122.26(c), by failing to conduct the annual Hazardous Metals Monitoring in 2002, 2003, and 2004; 30 TAC §281.25(a)(4), TPDES General Permit Number TXR050000 Part V., Section A.3., and 40 CFR §122.26(c), by failing to conduct and document quarterly inspection of vehicles that are stored containing fluids from January to March 2005, and in all four quarters of 2002, 2003, and 2004; 30 TAC §281.25(a)(4), TPDES General Permit Number TXR050000 Part V., Section M.4., and 40 CFR §122.26(c), by failing to conduct the quarterly benchmark samples for total suspended solids, iron, lead, and aluminum at the storm water outfall in all four quarters of 2003 and 2004; PENALTY: $37,380; STAFF ATTORNEY: Shawn Slack, Litigation Division, MC 175, (512) 239-0063; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Marvin's Chevron Service Center, Inc. dba Marvin's Chevron; DOCKET NUMBER: 2005-0043-PST-E; TCEQ ID NUMBERS: 31786 and RN101794097; LOCATION: 4450 Kostoryz Road, Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.22(a) and TWC, §5.702, by failing to pay UST fees and associated late fees; PENALTY: $3,150; STAFF ATTORNEY: Alfred Okpohworho, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(5) COMPANY: Robert Beltran; DOCKET NUMBER: 2004-1904-PST-E; TCEQ ID NUMBERS: 22038 and RN104416433; LOCATION: 1813 Adamo Lane, Pearland, Brazoria County, Texas; TYPE OF FACILITY: UST installation, repair, and removal contracting business; RULES VIOLATED: 30 TAC §§30.5(a) and (b), 30.301(b), and 334.401(b), and TWC, §26.452(a), by failing to obtain an occupational license or registration from the commission prior to installation, repair, or removal of a regulated UST system; PENALTY: $1,000; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Sand & Gravel, Inc.; DOCKET NUMBER: 2005-1509-WQ-E; TCEQ ID NUMBER: RN102993300; LOCATION: 850 Farm-to-Market Road 1287, Graham, Young County, Texas; TYPE OF FACILITY: sand and gravel facility; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(c), by failing to obtain authorization to discharge storm water associated with industrial activity; PENALTY: $1,050; STAFF ATTORNEY: Robert Mosley, Litigation Division MC 175, (512) 239-0627; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

TRD-200602313

Stephanie Bergeron Perdue

Acting Deputy Director, Office of Legal Services

Texas Commission on Environmental Quality

Filed: April 25, 2006

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 5, 2006**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P. O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 5, 2006**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to the commission in **writing**.

(1) COMPANY: Brant-Sta, Inc. dba Wilmer Food Mart; DOCKET NUMBER: 2004-0483-AIR-E; TCEQ ID NUMBERS: DB5318B and RN100746510; LOCATION: 406 East Beltline Road, Wilmer, Dallas County, Texas; TYPE OF FACILITY: convenience store with an incinerator; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.085(b), by failing to authorize air emissions; 30 TAC §111.127(b) and THSC, §382.085(b), by failing to maintain incinerator usage records; PENALTY: $4,725; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: City of Point; DOCKET NUMBER: 2005-1092-PWS-E; TCEQ ID NUMBERS: 1900004 and RN101391407; LOCATION: on County Road 1470 off Farm-to-Market 47, Rains County, Texas; TYPE OF FACILITY: water treatment plant; RULES VIOLATED: 30 TAC §291.113(f)(4) and THSC, §341.0315(c), by exceeding the maximum contaminant limit (MCL) of 0.080 milligrams per liter (mg/L) for trihalomethanes during 2004; 30 TAC §290.113(f)(5) and THSC, §341.0315(c), by exceeding the MCL of 0.060 mg/L for haloacetic acid during 2004; PENALTY: $700; STAFF ATTORNEY: Rebecca Davis, Litigation Division, MC 175, (512) 239-5487; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(3) COMPANY: City of Texline; DOCKET NUMBER: 2003-1242-MWD-E; TCEQ ID NUMBERS: 11029-001 and RN102844073; LOCATION: on Farm-to-Market Road 296, north of Texline city limits, Dallam County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1) and Water Quality Permit Number 11029-001, Section IV, A, by failing to meet the limit of 100 mg/L for five-day biochemical oxygen demand (BOD5) as recorded for the months of January - April 2002, June 2002, and October - December 2002; 30 TAC §305.125(1) and Water Quality Permit Number 11029-001, Section VI, Special Provisions, 3., by failing to operate and maintain the Imhoff tank for optimum wastewater treatment; 30 TAC §305.125(1) and Water Quality Permit Number 11029-001, Section VII, Standard Provisions 2.c., by failing to notify the executive director in writing of the 40% or greater exceedances of BOD5 for the months of February, June, October, and December 2002; 30 TAC §305.125(1) and Water Quality Permit Number 11029-001, Section VI, Special Provision 8., by failing to take and submit soil sample results for the years of 2000, 2001, and 2002, in September of each year; PENALTY: $5,850; STAFF ATTORNEY: Alfred Okpohworho, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(4) COMPANY: Colorado Fayette Medical Center; DOCKET NUMBER: 2005-0384-PST-E; TCEQ ID NUMBERS: 74916 and RN100906957; LOCATION: 400 Youens Drive, Weimar, Colorado County, Texas; TYPE OF FACILITY: emergency hospital generators; RULES VIOLATED: 30 TAC §37.815 (a) and (b), by failing to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of a petroleum underground storage tank (UST); PENALTY: $950; STAFF ATTORNEY: Amie Richardson, Litigation Division, MC 175, (512) 239-2999; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Inara Convenience, Inc. dba Rosedale Texaco; DOCKET NUMBER: 2005-0372-PST-E; TCEQ ID NUMBER: RN101534790; LOCATION: 6101 East Rosedale Street, Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of two petroleum USTs; PENALTY: $3,930; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Jacinto Enterprises, Inc. dba Siesta Grocery; DOCKET NUMBER: 2005-0084-PST-E; TCEQ ID NUMBER: RN102957941; LOCATION: 3164 North United States Highway 277, Eagle Pass, Maverick County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; Texas Water Code (TWC), §26.3475(c) and 30 TAC §334.49(c)(4) and (2)(C), by failing to inspect and test the corrosion protection system within three to six months of initial installation and once every three years thereafter, and by failing to ensure proper operation of the rectifier and other system components by performing 60-day inspections; TWC, §26.3475(c)(1) and 30 TAC §334.50(a)(1)(A), by failing to demonstrate that a valid form of release detection was being used that was capable of detecting a release from any portion of the system; TWC, §26.346(a) and 30 TAC §334.8(c)(4)(A)(vii), by failing to renew a previously issued UST delivery certificate; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; TWC, §26.3475(a) and 30 TAC §334.8(c)(5)(C), by failing to label the fill pipes according to the registration and self-certification form; PENALTY: $13,125; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Laredo Regional Office,

707 East Calton Road, Suite 304, Laredo, Texas 78041-3638, (956) 791-6611.

(7) COMPANY: Joey Nguyen dba Stop & Shop; DOCKET NUMBER: 2005-1128-PST-E; TCEQ ID NUMBER: RN102060803; LOCATION: 5037 Wilbarger Street, Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(1), (3), (4), and (6), and THSC, §382.085(b), by failing to maintain for review a copy of the facility's California Air Resources Board (CARB) Executive Order, Stage II facility maintenance records, Stage II employee training records, and a record of daily inspections conducted at the facility; 30 TAC §115.242(3)(A) and (8), and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition as specified by CARB Executive Order(s), and free of defects that would impair the effectiveness of the system, and by failing to prevent the tamping with the Stage II vapor recovery; 30 TAC §115.222(1), and THSC, §382.085(b), by failing to have a submerged fill pipe that extends from the top of a tank, a maximum clearance of six inches from the bottom of the tank; 30 TAC §115.245(2), and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; PENALTY: $4,500; STAFF ATTORNEY: Rebecca Davis, Litigation Division, MC 175, (512) 239-5487; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Laredo Paving, Inc.; DOCKET NUMBER: 2005-1816-AIR-E; TCEQ ID NUMBERS: RN104712401; LOCATION: Martin Marietta Materials, Inc. lease, 0.4 miles north of mile marker 16, on the east side of IH-35, Webb County, Texas; TYPE OF FACILITY: mobile hot mix asphalt plant; RULES VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain a site permit prior to operating or to qualify by a permit by rule before operation of the plant at the site; PENALTY: $6,250; STAFF ATTORNEY: Rachael Gaines, Litigation Division, MC 175, (512) 239-0078; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3638, (956) 791-6611.

(9) COMPANY: Laredo Paving, Inc.; DOCKET NUMBER: 2004-0508-AIR-E; TCEQ ID NUMBERS: 946667U and RN102298916; LOCATION: 15 miles north of Sterling City on United States 87, Sterling County, Texas; TYPE OF FACILITY: mobile hot mix asphalt plant; RULES VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b), by failing to obtain a site permit prior to operating or to qualify by a permit by rule before operation of the plant at the site; PENALTY: $1,000; STAFF ATTORNEY: Rachael Gaines, Litigation Division, MC 175, (512) 239-0078; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(10) COMPANY: Lone Star Crushed Stone and Sand, Inc.; DOCKET NUMBER: 2005-0997-WQ-E; TCEQ ID NUMBER: RN103936878; LOCATION: 14 County Road 460, Cooke County, Texas; TYPE OF FACILITY: mining and crushing site; RULES VIOLATED: 30 TAC §281.25(a)(4) and Permit Number TXR05R232 Part III, A., by failing to implement a storm water pollution prevention plan (SWP3); 30 TAC §281.25(a)(4) and Permit Number TXR05R232 Part III, D.1(c) and V.J.4, by failing to conduct annual metals monitoring, or complete the annual metals monitoring waiver form and to conduct benchmark monitoring on discharges of storm water associated with industrial activities; TWC, §26.121, by failing to prevent noncompliant discharge to water in the state which resulted in a documented impact to the environment; PENALTY: $15,504; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Marcus Ivan Thomas; DOCKET NUMBER: 2005-1005-OSI-E; TCEQ ID NUMBERS: OS0009110 and RN103350997; LOCATION: 2940 Kimble County Road 371 within Kimble Land Ranches, and 3595 Farm-to-Market Road 385, Kimble County, Texas; TYPE OF FACILITY: on-site sewage facility installer; RULES VIOLATED: 30 TAC §285.50(g)(2), by working as an on-site sewage facility (OSSF) installer while acting in the capacity of an employee for the permitting authority within the permitting authority's area of jurisdiction; 30 TAC §285.61(4) and THSC, §366.051(c), by failing to obtain the permitting authority's authorization to construct an OSSF prior to beginning the construction of an OSSF system owned by another person; PENALTY: $1,000; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(12) COMPANY: Maverick Trucking Company, Inc.; DOCKET NUMBER: 2004-0907-MSW-E; TCEQ ID NUMBER: RN104273768; LOCATION: near the intersection of Highway 79 and County Road 122, Williamson County, Texas; TYPE OF FACILITY: trucking business that transports solid waste; RULES VIOLATED: 30 TAC §327.5(a), by failing to abate and contain a spilled substance and fully cooperate with the executive director; PENALTY: $2,500; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(13) COMPANY: Mohammad Salman dba Stop N Drive 1; DOCKET NUMBER: 2003-1156-PST-E; TCEQ ID NUMBERS: 0064345 and RN102025178; LOCATION: 10750 Highway 150, Shepherd, San Jacinto County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a) and TWC, §26.3475(d), by failing to provide corrosion protection for the UST system at the facility; 30 TAC §334.45(e)(2)(D), by failing to equip one UST at the facility with a removable or permanent factory constructed drop tube which shall extend to within 12 inches of the tank bottom; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by releases arising from operation of the USTs; PENALTY: $9,500; STAFF ATTORNEY: Alfred Okpohworho, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(14) COMPANY: New Braunfels Aero Service, Inc. Dba Brauntex Aviation; DOCKET NUMBER: 2005-1589-PST-E; TCEQ ID NUMBER: RN102247574; LOCATION: 1642 Entrance Drive, New Braunfels, Guadalupe County, Texas; TYPE OF FACILITY: aircraft refueling facility; RULES VIOLATED: 30 TAC §334.49(a) and TWC, §26.3475(d), by failing to provide proper corrosion protection for all USTs; 30 TAC §334.50(a)(1)(A) and (d)(1)(B) and TWC, §26.3475(c)(1), by failing to provide a release detection method capable of detecting a release from any portion of the UST system which contains regulated substances including the tanks, piping, and other underground ancillary equipment; 30 TAC §334.7(d)(3), by failing to amend the registration within 30 days of any change to reflect the current status of the UST system; PENALTY: $6,000; STAFF ATTORNEY: Rachael Gaines, Litigation Division, MC 175, (512) 239-0078; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(15) COMPANY: Saniha & Associates, Inc. dba Brothers Future Food Mart; DOCKET NUMBER: 2003-1249-PST-E; TCEQ ID NUMBER: RN101432268; LOCATION: 4225 Miller Avenue, Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.2475(c)(1) and 30 TAC §334.48(c), § 334.50(b)(1)(A), and (d)(1)(B)(ii), by failing to conduct effective manual or automatic inventory control procedures for all USTs; and by failing to reconcile inventory control records on a monthly basis and by failing to monitor the unleaded plus tank (tank number 1) in a manner which will detect a release at a frequency of at least once each month, not to exceed 35 days between each monitoring; PENALTY: $15,600; STAFF ATTORNEY: Amie Richardson, Litigation Division, MC 175, (512) 239-2999; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Southwest Tire Disposal, L.L.C.; DOCKET NUMBER: 2001-0725-MSW-E; TCEQ ID NUMBERS: 6200001, RN103043956 and RN104002720; LOCATION: 7282 Doniphan, Canutillo, El Paso County, Texas; TYPE OF FACILITY: used and scrap tire facility; RULES VIOLATED: 30 TAC §328.58(b), by failing to properly manifest scrap tires at the Lubbock facility by not including the transporter's driver's license number; 30 TAC §328.59(a) and §328.60(a), by failing to obtain a scrap tire storage site registration prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in trailers at the Canutillo facility; 30 TAC §328.57(c)(3), by failing to transport used and scrap tires to an authorized site; 30 TAC §328.54(d), by failing to mark scrap tire transportation vehicles with the required transporter identification information; 30 TAC §328.57(d)(1) and (2), by failing to properly record changes to the transporter manifests; 30 TAC §328.57(c)(1), by failing to register as a transporter prior to transporting used and scrap tires; 30 TAC §328.58(b), by failing to properly manifest scrap tires at the Canutillo facility by not including the transporter's driver's license number, state of issuance of the license, and the transporter's registration number on the manifests; PENALTY: $12,140; STAFF ATTORNEY: Shannon Strong, Litigation Division, MC 175, (512) 239-0972; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(17) COMPANY: Sunoco, Inc. (R&M); DOCKET NUMBER: 2005-0794-AIR-R; TCEQ ID NUMBER: RN102888328; LOCATION: 8811 Strang Road, La Porte, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §101.211(a) and THSC, §382.085(b), by failing to submit an emission event report for the estimated emissions as a result of a scheduled startup activity; 30 TAC §116.115(c), Air Permit Number 5572B, Special Condition Number 1; and THSC, §382.085(b), by emitting unauthorized air contaminants into the atmosphere; PENALTY: $3,614; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200602312
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: April 25, 2006

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Notice of Water Quality Applications

The following notices were issued during the period of April 20, 2006.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P. O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

COASTAL FLATS, LTD has applied for a renewal of Permit No. 14383-001 to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 73,000 gallons per day via drip irrigation of 17.5 acres of non-public access land in the Final Phase. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 2,500 feet south of the intersection State Highway 87 and Magnolia Lane and 5.5 miles northeast of the Bolivar Ferry Port in Galveston County, Texas.

CITY OF EAST TAWAKONI has applied for a renewal of TPDES Permit No. 11428-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 130,000 gallons per day. The facility is located approximately 1 mile east of the intersection of State Highway 276 and Farm-to-Market Road 513 on the northeast side of Lake Tawakoni in Rains County, Texas.

GALVESTON COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 12 has applied for a major amendment to TPDES Permit No. 12039-001 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 750,000 gallons per day to an annual average flow not to exceed 1,000,000 gallons per day. The facility is located approximately 500 feet east of State Highway 146 and approximately 2,500 feet southeast of the intersection of Farm-to-Market Road 518 and State Highway 146 (adjacent to 524 Cien) in Galveston County, Texas.

TOWN OF LINDSAY has applied for a renewal of TPDES Permit No. 10923-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 66,000 gallons per day. The facility is located at 100 Sycamore Street, approximately 600 feet east of the Farm-to-Market Road 3108 bridge over Elm Fork Trinity River, southeast of the Town of Lindsay in Cooke County, Texas.

MARTIN OPERATING PARTNERSHIP L.P. has applied for a major amendment to TPDES Permit No. WQ0010931001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 4,000 gallons per day to a daily average flow not to exceed 8,500 gallons per day. The facility is located in the southeast portion of Pelican Island, adjacent to the Galveston Channel, approximately 6,000 feet east of the Todd Shipyards in Galveston County, Texas.

CITY OF PINELAND has applied for a renewal of TPDES Permit No. 10249-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 214,000 gallons per day. The facility is located at the intersection of Thomas Street and Transmission Boulevard in the City of Pineland approximately 1.25 miles southeast of the intersection of U. S. Highway 96 and Farm-to-Market Road 83 in Sabine County, Texas.

RIVER CROSSING CARRIAGE HOUSES, LTD. has applied for a new permit, Proposed Permit No. WQ0014637001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 16,500 gallons per day via surface irrigation of 225.6 acres of public access land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site will be located 0.6 mile south of the Guadalupe River Bridge, on the east side of U. S. Highway 281 in Comal County, Texas.

SHELBYVILLE INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. 13370-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 11,250 gallons per day. The facility is located at 1,000 feet due south of the intersection of Farm-to-Market Road 147 and State Highway 87, on the west side of State Highway 87 in Shelby County, Texas.

TRD-200602322
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 26, 2006

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Proposal for Decision (Courtesy Mart)

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on April 19, 2006, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Diversified Investments, Inc. dba Courtesy Mart 109; SOAH Docket No. 582-06-1404; TCEQ Docket No. 2005-1457-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Diversified Investments, Inc. dba Courtesy Mart 109 on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguía, Office of the Chief Clerk, (512) 239-3300.

TRD-200602325
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 26, 2006

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Proposal for Decision (Oshborn)

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on April 20, 2006, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Oshborn, Inc. dba Fast Stop; SOAH Docket No. 582-05-6560; TCEQ Docket No. 2003-0984-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Oshborn, Inc. dba Fast Stop on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguía, Office of the Chief Clerk, (512) 239-3300.

TRD-200602323
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 26, 2006

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Proposal for Decision (Slay)

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on April 19, 2006, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Chester L. Slay, Jr. individually; Union Texas Limited Partnership; and Chester L. Slay, Jr., Trustee of Peckham Family Trust; SOAH Docket No. 582-04-0251; TCEQ Docket No. 2000-0396- IHW-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Chester L. Slay, Jr. individually; Union Texas Limited Partnership; and Chester L. Slay, Jr., Trustee of Peckham Family Trust on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC- 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguía, Office of the Chief Clerk, (512) 239-3300.

TRD-200602324
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 26, 2006

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Department of Family and Protective Services

Title IV-B Child and Family Services Plan

The Texas Department of Family and Protective Services (DFPS), as the designated agency to administer Title IV-B programs in the state of Texas, is developing the annual update of the Title IV-B Child and Family Services Plan (CFSP) for Texas. Under guidelines issued by the U.S. Department of Health and Human Services, Administration for Children and Families, DFPS is required to review the progress made in the previous year toward accomplishing the goals and objectives identified in the state's five year CFSP for the period from October 1, 2004, through September 30, 2009.

The CFSP Annual Progress and Services Report (APSR) is required for the state to receive its federal allocation for fiscal year 2007 authorized under Title IV-B of the Social Security Act, Subparts 1 and 2, and the Child Abuse Prevention and Treatment Act (CAPTA). The APSR also gives states an opportunity to apply for fiscal year 2006 funds for the Chafee Foster Care Independence Program. The report referenced above must be submitted by June 30, 2006.

The purpose of this notice is to solicit input in the development of the APSR. This input will enable the agency to consider and include any changes in our state plan in order to best meet the needs of the children and families the agency serves. Members of the public can obtain more detailed information regarding the CFSP from the DFPS web site at: http://www.dfps.state.tx.us. The web site includes a copy of last year's APSR and a copy of the 2004-2009 CFSP.

Written comments regarding the annual update or the five-year plan may be faxed or mailed to: Texas Department of Family and Protective

Services, Attention: Henry Darrington; P.O. Box 149030, MC W-157; Austin, Texas 78714-9030; phone (512) 438-3412; fax (512) 438-3782. The comments must be received no later than June 1, 2006.

TRD-200602310
Gerry Williams
General Counsel
Department of Family and Protective Services
Filed: April 25, 2006

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Office of the Governor, Economic Development and Tourism Division

Texas Industry Development Request for Applications

The Office of the Governor, Economic Development and Tourism Division hereby gives notice that the Texas Small Business Industrial Corporation is accepting applications for loans to be funded through the Texas Industry Development Revolving Loan program.

The Texas Industry Development Revolving Loan Program provides capital to Texas communities and eligible 501(c) 3 corporations at favorable market rates. The program supports eligible tax exempt public purpose projects that stimulate economic development within the community. The loans are available with low cost, variable rate long-term financing with the term of the loan not extending beyond the useful life of the assets and up to bond maturity in 2025.

Eligible projects must meet the project definition as described in the Development Corporation Act of 1979, V.T.C.S., Article 5109.6, the Texas Industry Development Program Guidelines, and all appropriate state and federal regulations applicable to the program. Examples of public projects include: public facilities, community infrastructure (i.e. water, wastewater, drainage, streets), remediation on public land/facilities, and public transportation. Loan terms are available for participants with a credit rating of an A or above with a term not to exceed December 2025.

A project must be found to be required or suitable for the promotion of economic development as deemed by the Corporation's board of directors in the performance of its public purposes, functions, and duties.

A project will not be eligible for funding under the program for moving existing jobs from one municipality or county in Texas to another municipality or county within the state.

Applications will be accepted at any time during a quarterly round. Applications must be postmarked or received by June 1, 2006 by 5:00 p.m. The application may be found at:

http://www.governor.state.tx.us/divisions/ecodev/ed_bank/TID_loan_program

For additional information, please contact Donna Weinberger-Rourke with the Office of the Governor Economic Development and Tourism Division at (512) 936-6443.

TRD-200602264
Robin Abbott
Assistant General Counsel
Office of the Governor, Economic Development and Tourism Division
Filed: April 21, 2006

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Texas Small Business Industrial Development Corporation Request for Qualified Brokers

The Office of the Governor, Economic Development and Tourism Division hereby gives notice that the Office is accepting applications for qualified brokers interested in providing investment services for the Texas Small Business Industrial Development Corporation's Texas Industry Development Revolving Loan program. All investments under the program must comply with the Public Funds Investment Act, Government Code, Chapter 2256.

Interested brokers must submit the following information to the Office of the Governor Economic Development and Tourism Division, Attn: Texas Industry Development Program at P. O. Box 12428, Austin, Texas 78711, or at 221 East 11th Street, Austin, Texas 78701:

(1) name, address, telephone number, and contact person for the dealer;

(2) proof that the dealer is registered in Texas through the National Association of Securities Dealers, Texas State Securities Board or the Comptroller of the Currency; and

(3) documentation regarding whether the dealer is a Historically Underutilized Business (HUB).

Submittals must be postmarked or received by May 19, 2006 at 5:00 p.m.

For additional information, please contact Jesus Morales with the Office of the Governor Economic Development and Tourism Division at (512) 936-0248.

TRD-200602263
Robin Abbott
Assistant General Counsel
Office of the Governor, Economic Development and Tourism Division
Filed: April 21, 2006

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Stealth LP DBA Houston Town & Country Hospital	L05979	Houston	00	03/31/06
McKinney	Cancer Center Associates DBA Rena Tarbet Cancer Center	L05952	McKinney	00	04/04/06
Texarkana	Advanced Cardiology of Texarna	L05976	Texarkana	00	03/21/06

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Arlington	Texas Oncology PA DBA Texas Cancer Center Arlington	L05116	Arlington	11	04/13/06
Austin	Austin Heart PA	L04623	Austin	36	04/14/06
Austin	Austin Heart PA	L05580	Austin	13	04/03/06
Austin	Daughters of Charity Health Services Austin DBA Seton Healthcare Network	L02896	Austin	87	04/04/06
Austin	Texas Cardiovascular Consultants PA	L05246	Austin	19	03/29/06
Baytown	Baytown Imaging Center LP	L05772	Baytown	02	04/10/06
Baytown	San Jacinto Methodist Hospital	L02388	Baytown	48	03/30/06
Beaumont	E I Dupont De Nemours & Co Inc	L00517	Beaumont	73	04/10/06
Beaumont	Exxonmobile Chemical Company Polyethylene Plant	L02316	Beaumont	33	04/10/06
Beaumont	Healthsouth Imaging Service of Beaumont	L05582	Beaumont	03	04/11/06
Corpus Christi	M Ayman Ghraowi MD PA DBA South Texas Institute of Cancer	L05652	Corpus Christi	04	04/11/06
Dallas	Dallas Cardiology Associates PA DBA HeartPlace East	L04607	Dallas	46	04/13/06
Dallas	Endocrine Associates of Dallas PA	L02668	Dallas	19	03/27/06
Dallas	Physician Reliance Network DBA Texas Cancer Center at Medical City Dallas	L05534	Dallas	06	04/03/06
Del Rio	Del Rio Heart Institute & Diabetes Center	L05950	Del Rio	01	03/30/06
Edinburg	Doctors Hospital at Renaissance LTD DBA Doctors Hospital at Renaissance	L05761	Edinburg	11	03/30/06
Edinburg	The University of Texas Pan American	L00656	Edinburg	29	03/30/06
El Paso	Cardinal Health	L01999	El Paso	104	04/10/06
El Paso	El Paso Healthcare System LTD DBA Las Palmas Medical Center	L02715	El Paso	69	04/03/06
El Paso	El Paso Healthcare System LTD DBA Las Palmas Medical Center	L02715	El Paso	70	04/06/06
El Paso	El Paso Healthcare System LP DBA Del Sol Diagnostic Center	L03395	El Paso	42	03/30/06
El Paso	Southwest Endocrine Consultants	L05617	El Paso	06	04/11/06
El Paso	The University of Texas at El Paso Radiation Safety Office	L00159	El Paso	51	04/12/06
Fort Worth	Healthsouth of Texas Inc DBA Baylor All Saints Gamma Knife Center	L05473	Fort Worth	19	03/31/06
Harlingen	Valley Coop Oil Mill	L02908	Harlingen	11	04/07/06
Houston	Aviles Engineering Corporation	L03016	Houston	18	04/11/06
Houston	E+PET Imaging II LP DBA PET Imaging of Houston	L05620	Houston	03	04/07/06
Houston	Houston Northwest Medical Center	L02253	Houston	67	04/11/06

AMENDMENTS TO EXISTING LICENSES ISSUED (Continued):

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Southwest	L00439	Houston	111	03/30/06
Houston	Memorial Hermann Hospital System Inc DBA Memorial Hermann Hospital	L00650	Houston	76	04/12/06
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Memorial City	L01168	Houston	89	03/30/06
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Memorial City	L01168	Houston	90	04/06/06
Houston	Red Oak Cardiovascular Center	L04159	Houston	13	04/03/06
Houston	The Methodist Hospital	L00457	Houston	141	04/06/06
Humble	Northeast Hospital Authority DBA Northeast Medical Center Hospital	L02412	Humble	60	04/07/06
Jourdanton	Jourdanton Hospital Corporation DBA South Texas Regional Medical Center	L04966	Jourdanton	11	04/07/06
Kingwood	E+ PET Imaging XIV LP DBA PET Imaging of Kingwood	L05901	Kingwood	01	04/13/06
Kingwood	KPH Consolidation Inc DBA Kingwood Medical Center	L04482	Kingwood	23	04/06/06
La Porte	Dow Chemical Company USA Houston Operations	L00510	La Porte	67	04/05/06
Lubbock	Isorx Texas LTD	L05284	Lubbock	16	04/10/06
Lubbock	M Fawwaz Shoukfeh MD PA DBA Texas Cardiac Center	L05276	Lubbock	10	04/11/06
McAllen	Columbia Rio Grande Regional Hospital	L03288	McAllen	43	03/31/06
McAllen	Columbia Rio Grande Regional Hospital	L03288	McAllen	44	04/14/06
McKinney	Taysir F Jarrah MD PA Cardiology	L05464	McKinney	04	04/11/06
Mesquite	HMA Mesquite Hospitals Inc DBA Medical Center of Mesquite	L02428	Mesquite	44	04/10/06
Midlothian	Chaparral Steel Midlothian LP	L02015	Midlothian	30	04/03/06
Missouri City	Fort Bend Hospital Inc DBA Fort Bend Medical Center	L03547	Missouri City	26	04/06/06
New Braunfels	Cancer Care Network of South Texas PA	L05717	New Braunfels	09	04/06/06
North Richland Hills	Dallas Cardiology Associates DBA HeartPlace North Richland Hills	L05548	North Richland Hills	10	03/30/06
Odessa	Madhava Agusala MD PA	L05628	Odessa	03	03/29/06
Odessa	West Texas Imaging Center	L04562	Odessa	09	03/30/06
Orange	Solvay Solexis Inc	L03968	Orange	17	04/05/06
Pasadena	Albemarle Corporation	L04072	Pasadena	16	04/04/06
Pasadena	Memc Pasadena Inc	L05129	Pasadena	07	04/03/06
Plano	Baylor Regional Medical Center of Plano	L05844	Plano	01	04/07/06
Plano	Columbia Medical Center of Plano Subsidiary DBA Medical Center of Plano	L02032	Plano	80	03/30/06
Plano	Physician Reliance Network Inc DBA Tx Oncology Plano West Cancer Center	L05896	Plano	04	04/11/06
Point Comfort	Formosa Plastics Corporation - Texas	L03893	Point Comfort	33	04/10/06
Port Arthur	Huntsman Corporation	L04067	Port Arthur	16	04/03/06
Port Lavaca	Seadrift Coke LP	L03432	Port Lavaca	21	04/10/06
San Angelo	San Angelo Hospital LP DBA San Angelo Community Medical Center	L02487	San Angelo	39	03/31/06
San Angelo	Shannon Medical Center	L02174	San Angelo	55	03/27/06
San Antonio	Cardinal Health	L02033	San Antonio	98	03/31/06
San Antonio	Central Cardiovascular Institute of SA	L04892	San Antonio	15	04/03/06
San Antonio	Diabetes and Glandular Disease Clinic PA	L02647	San Antonio	21	04/04/06
San Antonio	San Antonio Endovascular & Heart Institute	L05766	San Antonio	01	03/31/06
San Antonio	Salvatore A Barbaro III MD PA	L05680	San Antonio	04	04/10/06

AMENDMENTS TO EXISTING LICENSES ISSUED (Continued):

Location	Name	License #	City	Amend-ment #	Date of Action
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	145	04/07/06
Sherman	North Texas Cardiology	L05395	Sherman	09	03/29/06
Sugarland	US Imaging Inc DBA Fort Bend Imaging	L04459	Sugarland	29	03/30/06
Sugarland	Draeger Safety Inc	L05757	Sugarland	03	04/04/06
Tatum	TXU Power Martin Lake Plant	L04593	Tatum	11	04/07/06
Texarkana	International Paper Company	L01686	Texarkana	29	03/30/06
Tyler	Cardinal Health	L02987	Tyler	44	04/12/06
Tyler	Nutech Inc	L04274	Tyler	54	03/27/06
Tyler	Physician Reliance Network Inc DBA Tyler Cancer Center	L04788	Tyler	09	04/04/06
Tyler	Trinity Mother Frances Health System	L01670	Tyler	120	04/03/06
Webster	Roger C Willette MD PA DBA Space Center Medical Clinic	L05466	Webster	04	04/14/06
Wharton	Signature Gulf Coast Hospital LP DBA Gulf Coast Medical Center	L01388	Wharton	42	04/06/06
Winnsboro	Presbyterian Hospital of Winnsboro	L03336	Winnsboro	20	04/06/06
Throughout Tx	Team Industrial Service Inc	L00087	Alvin	139	04/03/06
Throughout Tx	Team Industrial Service Inc	L00087	Alvin	140	04/05/06
Throughout Tx	Team Industrial Service Inc	L00087	Alvin	141	04/11/06
Throughout Tx	Team Industrial Service Inc	L00087	Alvin	142	04/13/06
Throughout Tx	Texas Commission on Environmental Quality Monitoring Operations Division	L01715	Austin	37	04/04/06
Throughout Tx	Texas Department of Transportation	L00197	Austin	114	04/13/06
Throughout Tx	Adams Brothers Inc	L04771	Athens	07	03/30/06
Throughout Tx	Wilson Inspection X-Ray Services Inc	L04469	Corpus Christi	54	04/05/06
Throughout Tx	National Inspection Services LLC	L05930	Crowley	06	04/11/06
Throughout Tx	Terracon Consultants Inc	L05268	Dallas	16	04/06/06
Throughout Tx	GK Techstar LLC DBA Techstar	L05562	Deer Park	07	04/06/06
Throughout Tx	Mestena Uranium LLC	L05939	Encino	01	03/30/06
Throughout Tx	TSIT	L05697	Fort Worth	02	04/13/06
Throughout Tx	Entact Services LLC	L05627	Grapevine	03	03/30/06
Throughout Tx	H & G Inspection Company Inc DBA Statewide Maintenance Company	L02181	Houston	208	04/03/06
Throughout Tx	HTS Inc Consultants	L02757	Houston	15	03/30/06
Throughout Tx	HVJ Associates Inc	L03813	Houston	30	04/03/06
Throughout Tx	Irisndt Inc	L04769	Houston	26	04/11/06
Throughout Tx	Professional Service Industries Inc	L00203	Houston	118	03/30/06
Throughout Tx	Protechnics Division of Core Laboratories LP	L03835	Houston	48	04/03/06
Throughout Tx	QC Laboratories Inc	L04750	Houston	15	04/03/06
Throughout Tx	Remington Engineering & Testing Inc DBA Remington Engineering	L05642	Houston	07	04/14/06
Throughout Tx	Non Destructive Inspection Corporation	L02712	Lake Jackson	126	04/10/06
Throughout Tx	Granite Construction Company	L04923	Lewisville	09	04/11/06
Throughout Tx	Rhodes Testing Inc	L04702	Longview	15	04/04/06
Throughout Tx	Hi-Tech Testing Service Inc	L05021	Longview	58	04/05/06
Throughout Tx	Anatec Inc	L04865	Nederland	66	04/04/06
Throughout Tx	Turner Specialty Service LLC	L05417	Nederland	19	04/10/06
Throughout Tx	Big State X-Ray	L02693	Odessa	49	04/04/06
Throughout Tx	Desert Industrial X-Ray LP	L04590	Odessa	49	04/14/06
Throughout Tx	Sivalls Inc	L02298	Odessa	34	04/04/06
Throughout Tx	Schulumberger Technology Corporation	L00764	Sugarland	94	04/04/06
Throughout Tx	Blazer Inspection Inc	L04619	Texas City	41	04/04/06
Throughout Tx	BJ Services Company USA	L02684	Tomball	52	04/03/06

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Encysive Pharmaceuticals Inc	L04568	Houston	15	03/29/06
Point Comfort	Alcoa World Alumina Atlantic Point Comfort Operation	L05186	Point Comfort	05	04/13/06
San Antonio	US Diagnostic Inc DBA San Antonio Diagnostic Imaging Inc	L04968	San Antonio	21	04/04/06
Throughout Tx	Alpha Testing Inc	L03411	Dallas	17	04/11/06
Throughout Tx	Texas Oncology PA DBA South Texas Cancer Center Harlingen	L00154	Harlingen	31	04/11/06

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Dallas	Kindred Hospitals Limited Partnership DBA Kindred Hospital Dallas	L03503	Dallas	18	04/07/06

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC), Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200602338
Cathy Campbell
General Counsel
Department of State Health Services
Filed: April 26, 2006

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Notice of Emergency Impoundment Order

Notice is hereby given that the Department of State Health Services (department) ordered all radioactive material located at Cav-Tech of Texas, Inc., and in the possession of Joe B. Crain (unlicensed), Houston, be impounded and temporarily stored at the department's headquarters in Austin, until the radioactive material is transferred to a licensed entity or the department issues other orders.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200602339
Cathy Campbell
General Counsel
Department of State Health Services
Filed: April 26, 2006

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Notice of Intent to Revoke Certificates of Registration

Pursuant to 25 Texas Administrative Code, §289.205, the Department of State Health Services (department), filed complaints against the following x-ray machine or laser registrants: The Heart Institute for Care, P.A., Amarillo, R04712; James G. Price, D.D.S., Corsicana, R10483; Gentle Touch Dentistry, Alice, R21407; Maryam Hariri, D.D.S., Inc., Spring, R21418; Healthcare Clinics, Dallas, R22123; Gulf Coast Chiropractic Center, Texas City, R22138; D. Scott Coats, D.M.D., Lewisville, R23625; SESA Podiatry Associates, P.A., San Antonio, R24338; Mahmoud Honardoost, D.D.S., P.A., Houston, R26438; Alejandro B. Plan, Jr., M.D., Longview, R28747; David A. Braunreiter M.D., P.A., Missouri City, R28768; Parker Road Surgery Center, Plano, Z01055; Valley Baptist Medical Center - Brownsville, Brownsville, Z01783.

The complaints allege that these registrants have failed to pay required annual fees. The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the department that they have complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the department within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Radiation Program Officer, 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200602341
Cathy Campbell
General Counsel
Department of State Health Services
Filed: April 26, 2006

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Notice of Intent to Revoke the Radioactive Material License of Rinker Materials Polypipe Division

Pursuant to 25 Texas Administrative Code, §289.205, the Department of State Health Services (department), filed a complaint against the following licensee: Rinker Materials Polypipe Division, Gainesville, G01972.

The complaint alleges that the licensee has failed to pay required annual fees. The department intends to revoke the radioactive material license; order the licensee to cease and desist use of such radioactive material; order the licensee to divest itself of the radioactive material; and order the licensee to present evidence satisfactory to the department that it has complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of the complaint, the department will not issue an order.

This notice affords the opportunity to the licensee for a hearing to show cause why the radioactive material license should not be revoked. A written request for a hearing must be received by the department within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Radiation Program Officer, 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the radioactive material license will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200602340
Cathy Campbell
General Counsel
Department of State Health Services
Filed: April 26, 2006

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Texas Higher Education Coordinating Board

Notice of Request for Qualifications

Pursuant to Texas Government Code, Chapter 2254, Subchapter A, the Texas Higher Education Coordinating Board (THECB) announces its issuance of a Request for Qualifications (RFQ) from qualified independent persons or firms to perform certain financial and management control audits for State Fiscal Years 2000 through 2007. The successful respondent will be expected to begin performance of the contract on or about June 15, 2006.

The Request for Qualifications, THECB's financial statements, and other information regarding the RFQ may be obtained by writing to Anthony Tegbe, Internal Auditor, Texas Higher Education Coordinating Board, 1200 E. Anderson Lane, Austin, Texas 78756, or by e-mail to Anthony.Tegbe@thecb.state.tx.us, or by accessing THECB's website at www.thecb.state.tx.us.

Responses must be received no later than 5:00 p.m., May 19, 2006.

All responses will be evaluated by a committee based upon the evaluation criteria and procedures set forth in the Request for Qualifications.

THECB reserves the right to accept or reject any or all responses submitted. THECB is not obligated to execute a contract on the basis of this notice or the distribution of any RFQ. THECB shall not pay for any costs incurred by any entity in responding to this notice or the RFQ.

The anticipated schedule of events pertaining to this RFQ is as follows: responses due May 19, 2006; contract execution on June 2, 2006; performance of contract to begin on June 15, 2006.

TRD-200602335
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Filed: April 26, 2006

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Texas Department of Housing and Community Affairs

Notice of Public Hearing

Multifamily Housing Revenue Refunding Bonds (Red Hills Villas) Series 2006

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Gattis Elementary School, 2920 Round Rock Ranch Boulevard, Round Rock, Texas 78664 at 6:00 p.m. on June 1, 2006 with respect to an issue of tax-exempt multifamily residential rental development revenue refunding bonds in an aggregate principal amount not to exceed $4,900,000 (the "Refunding Bonds"). The Refunding Bonds are being issued for the purpose of refunding a portion of the Issuer's Multifamily Housing Revenue Bonds (Red Hills Villas) Series 2000A (the "Series 2000A Bonds") currently outstanding in the aggregate principal amount of $9,900,000. The proceeds of the Series 2000A Bonds were loaned to South Creek Housing, Ltd., a limited partnership (the "Borrower") to: (A) finance a portion of the costs of acquiring, constructing, and equipping a multifamily housing development (the "Development") described as follows: 168-unit multifamily residential rental development located at 1401 A. W. Grimes Boulevard, Round Rock, Williamson County, Texas and (B) to pay for certain costs of issuing the Series 2000A Bonds. The Development is owned by the Borrower and managed by Capstone Real Estate Services, Inc.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Teresa Morales at the Texas Department of Housing and Community Affairs, P. O. Box 13941, Austin, TX 78711-3941; (512) 475-3344; and/or teresa.morales@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Teresa Morales in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Teresa Morales prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Teresa Morales at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200602318
William Dally
Acting Executive Director
Texas Department of Housing and Community Affairs
Filed: April 26, 2006

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Notice of Public Hearing

Multifamily Housing Revenue Refunding Bonds (Champion's Crossing Apartments) Series 2006

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Kyle Elementary School, 500 W. Blanco, Kyle, Texas 78640 at 6:00 p.m. on May 23, 2006 with respect to an issue of tax-exempt multifamily residential rental development revenue refunding bonds in an aggregate principal amount not to exceed $4,550,000 (the "Refunding Bonds"). The Refunding Bonds are being issued for the purpose of refunding a portion of the Issuer's Multifamily Housing Revenue Bonds (Champion's Crossing Apartments) Series 2000 (the "Series 2000 Bonds") currently outstanding in the aggregate principal amount of $7,093,122. The proceeds of the Series 2000 Bonds were loaned to South Creek Housing, Ltd., a limited partnership (the "Borrower") to: (A) finance a portion of the costs of acquiring, constructing, and equipping a multifamily housing development (the "Development") described as follows: 156-unit multifamily residential rental development located at 345 Champion Boulevard, San Marcos, Hays County, Texas and (B) to pay for certain costs of issuing the Series 2000 Bonds. The Development is owned by the Borrower and managed by Capstone Real Estate Services, Inc.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Teresa Morales at the Texas Department of Housing and Community Affairs, P. O. Box 13941, Austin, TX 78711-3941; (512) 475-3344; and/or teresa.morales@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Teresa Morales in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Teresa Morales prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Teresa Morales at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200602319
William Dally
Acting Executive Director
Texas Department of Housing and Community Affairs
Filed: April 26, 2006

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Notice of Public Hearing

Multifamily Housing Revenue Bonds (Stonehaven Apartment Homes) Series 2006

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Post Elementary School, 7600 Equador, Houston, Harris County, Texas 77040, at 6:00 p.m. on May 25, 2006 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $12,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to 15301 Stonehaven Apartments, LP, a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing, and equipping a multifamily housing development (the "Development") described as follows: 192-unit multifamily residential rental development located at approximately the 15301 block of Northwest Freeway, Harris County, Texas. A physical address has not been assigned. Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Teresa Morales at the Texas Department of Housing and Community Affairs, P. O. Box 13941, Austin, TX 78711-3941; (512) 475-3344; and/or teresa.morales@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Teresa Morales in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Teresa Morales prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Teresa Morales at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200602320
William Dally
Acting Executive Director
Texas Department of Housing and Community Affairs
Filed: April 26, 2006

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Houston-Galveston Area Council

Request for Proposals

Houston-Galveston Area Council (H-GAC)--as the administrative agent for the Gulf Coast Workforce Board and its operating affiliate, The WorkSource--announces the availability of a request for pro-

posals to serve primarily hurricane evacuees who are living in the Houston area. We are soliciting an organization to design and deliver assessment, counseling, and short-term training that helps individuals who have never worked or who have poor work histories go to work. Prospective bidders may download the proposal package from H-GAC's web site at http://h-gac.com or The WorkSource website at http://theworksource.org beginning at noon Central Daylight Time on Wednesday, May 3, 2006. H-GAC will also fill requests for hard copies of the proposal package beginning at that time. We will not hold a bidder's conference for this request. Proposals are due in H-GAC offices by 12:00 noon Central Daylight Time on Wednesday, May 10, 2006. We will not accept late proposals, and we will not make exceptions. Questions about obtaining a request for proposal package may be directed to Carol Kimmick at (713) 627-3200 or ckimmick@theworksource.org.

TRD-200602251
Jack Steele
Executive Director
Houston-Galveston Area Council
Filed: April 19, 2006

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Texas Department of Insurance

Company Licensing

Application for incorporation to the State of Texas by COLLECTORS INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Traverse City, Michigan.

Application to change the name of EULER AMERICAN CREDIT INDEMNITY COMPANY to EULER HERMES AMERICAN CREDIT INDEMNITY COMPANY, a foreign fire and/or casualty company. The home office is in Owings Mills, Maryland.

Application to change the name of PROGRESSIVE HOME INSURANCE COMPANY to PROGRESSIVE ADVANCED INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Mayfield Village, Ohio.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200602332
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: April 26, 2006

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Notice of Call for Issues Related to 2006 Biennial Title Hearing

Texas Insurance Code §2703.201 et seq. requires the Department of Insurance to hold a biennial hearing to consider adoption of premium rates and such other matters and subjects relative to the regulation of the business of title insurance as may be requested by any association, any title insurance company, any title insurance agent, any member of the public, or as the Commissioner may determine necessary to consider. Notice of the hearing will appear in the *Texas Register* at a later date. This notice of call is issued to receive subjects and matters from any association, any title insurance company, any title insurance agent, or any member of the public such that notice of the matters to be considered at the biennial hearing be provided pursuant to the requirements of §§2703.203, 2703.204, 2703.205, 2703.207, and 2703.208. Any association, any title insurance company, any title insurance agent, or any member of the public that would like to request that any matter or subject, in addition to the rates for title insurance, be considered at the biennial hearing must provide a detailed description of the matter or subject no later that June 5, 2006.

All requests should be addressed to the Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104 (please refer to reference number T-0406-08-I). Requests should be submitted in both hard copy and 3 1/2 inch diskette format.

TRD-200602336
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: April 26, 2006

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Notice of Request for Qualifications for Special Deputies RFQ-SDR-2006-1

The Commissioner of Insurance will be accepting, through June 30, 2006, responses from individuals or legal entities interested in providing services as a Special Deputy Receiver ("SDR"). An SDR acts on behalf of the Commissioner of Insurance in his capacity as the Receiver of an insurer that is placed in receivership by the courts for purposes of either rehabilitation or liquidation. Duties and activities under control of an SDR may include:

Obtaining control of the insurer's operation, and identifying and securing property and records

Marshalling, evaluating, and liquidating assets

Supervising litigation filed by and against the receivership estate

Operating information systems and extracting data

Investigating the liability of any parties responsible for the insurer's insolvency, and identifying any preferential transfers

Providing notice of the receivership to claimants and interested parties

Coordinating the referral of claims to guaranty associations, and handling claims against the receivership estate

Distributing assets to creditors with approved claims

Filing pleadings, business plans and other reports

An Applicant's approval to be an Approved Contractor will be valid only during the term of this RFQ, which will commence on or about September 1, 2006, and expire on or about August 31, 2009. Following the expiration of this three-year term, all Approved Contractors will be required to qualify in accordance with a subsequent RFQ in order to submit bid proposals issued after the RFQ term. TDI reserves the right to issue other RFQs for SDRs to add Approved Contractors, if needed, or to obtain bids for similar or related services, at any time during the term of this RFQ.

In the event that the Commissioner determines that an SDR should be appointed in a receivership proceeding during the term of this RFQ, he will issue a Request for Proposal ("RFP"). **Only those individuals or legal entities that become qualified in accordance with this RFQ ("Approved Contractors") will have an opportunity to submit a bid proposal in response to any RFP**.

Contact Information

Interested parties may obtain the RFQ and application forms via TDI's web site at http://www.tdi.state.tx.us/company/documents/sdr-rfq2006rev.doc, or contact Scott Kyle, Financial Program SDR

Process, Texas Department of Insurance, P.O. Box 149104, Mail Code 305-2C, Austin TX 78714, telephone (512) 322-3467, e-mail sdrcontracting@tdi.state.tx.us. Questions & Answers regarding the RFQ will appear as needed on TDI's website.

Evaluation Criteria Submissions will be evaluated on the basis of the criteria set forth in the RFQ.

Closing Date

Submissions must comply with all requirements of the RFQ, and must be received by the designated contact person no later than 3:00 p.m. on June 30, 2006. Submissions received after that time and date will not be considered.

Note

TDI reserves the right to accept or reject any or all submissions. TDI is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of a subsequent RFP. TDI is not responsible for any costs incurred in responding to this RFQ or any subsequent RFP.

TRD-200602311
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: April 25, 2006

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for incorporation in Texas of PROCESS ONE TPA, L.L.C., a domestic third party administrator. The home office is GARLAND, TEXAS.

Application for admission to Texas of HILLCREST BENEFIT ADMINISTRATORS, INC., a foreign third party administrator. The home office is MOUNT DORA, FLORIDA.

Application for admission to Texas of CYPRESS CARE, INC., a foreign third party administrator. The home office is WILMINGTON, DELAWARE.

Any objections must be filed within 20 days after this notice is published in the Texas Register, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200602342
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: April 26, 2006

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Texas Department of Insurance, Division of Workers' Compensation

Correction of Error

The Texas Department of Insurance, Division of Workers' Compensation, adopted new rules in Chapter 133, concerning medical billing and processing, and in Chapter 134, concerning benefits--guidelines for medical services, charges, and payments. The adoption notice in the April 28, 2006, *Texas Register* (31 TexReg 3544 and 3561) contained an error in the date for which the new rules apply.

The correct date is May 2, 2006. The date was published in error as May 1, 2006. The error can be found in the published rule text as follows.

In §133.1(b) on page 3553, subsection (b) was published as:

"(b) This chapter applies to all health care provided on or after May 1, 2006. For health care provided prior to May 1, 2006, medical billing and processing shall be in accordance with the rules in effect at the time the health care was provided."

The date May 1, 2006 appears twice in subsection (b). Both dates need to be corrected to reflect an effective date of May 2, 2006. This subsection should read:

"(b) This chapter applies to all health care provided on or after May 2, 2006. For health care provided prior to May 2, 2006, medical billing and processing shall be in accordance with the rules in effect at the time the health care was provided."

In §134.100(e) on page 3564, subsection (e) was published as:

"(e) This section shall apply to all dates of travel on or after May 1, 2006."

The date May 1, 2006 appears once in subsection (e). The date needs to be corrected to reflect an effective date of May 2, 2006. The subsection should read:

"(e) This section shall apply to all dates of travel on or after May 2, 2006."

In §134.110(g) on page 3565, subsection (g) was published as:

"(g) This section shall apply to all dates of travel on or after May 1, 2006."

The date May 1, 2006 appears once in subsection (g). The date needs to be corrected to reflect an effective date of May 2, 2006. The subsection should read:

"(g) This section shall apply to all dates of travel on or after May 2, 2006."

In §134.130(f) on page 3565 subsection (f) was published as:

"(f) This section shall apply to all dates of service on or after May 1, 2006."

The date May 1, 2006 appears once in subsection (f). The date needs to be corrected to reflect an effective date of May 2, 2006. The subsection should read:

"(f) This section shall apply to all dates of service on or after May 2, 2006."

TRD-200602345

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Notice of Public Hearing

The Texas Department of Insurance, Division of Workers' Compensation will hold a public hearing on Wednesday, May 10, 2006 at 2:00 p.m. in the Tippy Foster Room of the Division of Workers' Compensation's central office located at 7551 Metro Center Drive, Suite 100, Austin, Texas, 78744-1609 (near the intersection of Highway 71 and Riverside Drive).

The Division of Workers' Compensation will hear testimony on amended rules (28 TAC §141.5 Description of the Benefit Review Conference; 28 TAC §141.6 Requesting Interlocutory Orders; §141.7 Division Actions After a Benefit Review Conference.) These proposed rules were published in the *Texas Register* on February 17, 2006 (31 TexReg 967), and can be viewed on the TDI Division of

Workers' Compensation's website at *http:/www.tdi.state.tx.us/rules*. Although the comment period for these rules closed on March 20, 2006, additional comments will be accepted at the hearing.

The Texas Department of Insurance, Division of Workers' Compensation offers reasonable accommodations for persons attending meetings, hearings, or educational events, as required by the Americans with Disabilities Act. If you require special accommodations, please contact Idalia Cantu at (512) 804-4403 a minimum of two days prior to the hearing date. For further information regarding this notice you may contact Kaylene Ray, Director, Legal Services at (512) 804-4280.

TRD-200602337
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: April 26, 2006

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Texas Lottery Commission

Instant Game Number 677 "Pink Panther"

1.0 Name and Style of Game.

A. The name of Instant Game No. 677 is "PINK PANTHER". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 677 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 677.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, $1.00, $2.00, $5.00, $10.00, $20.00, $25.00, $50.00, $250, $2,500, $25,000, and PAW SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 677 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
PAW SYMBOL	WINX10
$1.00	ONE$
$2.00	TWO$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$25.00	TWY FIV
$50.00	FIFTY
$250	TWO FTY
$2,500	25 HUND
$25,000	25 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 677 - 1.2E

CODE	PRIZE
TWO	$2.00
FIV	$5.00
TEN	$10.00
TWL	$12.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $5.00, $10.00, $12.00, or $20.00.

H. Mid-Tier Prize - A prize of $25.00, $50.00, or $250.

I. High-Tier Prize - A prize of $2,500 or $25,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (677), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 677-0000001-001.

L. Pack - A pack of "PINK PANTHER" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 001 and 002 will be on the top page; tickets 003 and 004 on the next page; etc.; and tickets 249 and 250 will be on the last page. Please note the books will be in an A - B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "PINK PANTHER" Instant Game No. 677 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "PINK PANTHER" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either WINNING NUMBER play symbol, the player wins the prize shown for that number. If a player reveals a PAW SYMBOL, the player wins all 10 (ten) prizes shown automatically. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified; and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No more than one pair of non-winning prize symbols on a ticket.

C. No duplicate non-winning Your Numbers play symbols on a ticket.

D. No duplicate Winning Numbers play symbols on a ticket.

E. The "paw" play symbol will only appear as dictated by the prize structure and only once on a ticket.

F. When the "paw" play symbol appears, there will be no occurrence of a Your Number play symbol matching either Winning Number play symbol.

G. Non-winning prize symbols will never be the same as the winning prize symbol(s).

H. No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "PINK PANTHER" Instant Game prize of $2.00, $5.00, $10.00, $12.00, $20.00, $25.00, $50.00, or $250, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $25.00, $50.00, or $250 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "PINK PANTHER" Instant Game prize of $2,500 or $25,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "PINK PANTHER" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "PINK PANTHER" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "PINK PANTHER" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 677. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 677 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	1,093,440	7.35
$5	225,120	35.71
$10	112,560	71.43
$12	64,320	125.00
$20	112,560	71.43
$25	32,160	250.00
$50	16,080	500.00
$250	3,082	2,608.70
$2,500	54	148,888.89
$25,000	6	1,340,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.85. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 677 without advance notice; at which point, no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 677, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200602308

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: April 25, 2006

♦ ♦ ♦

North Central Texas Council of Governments

Notice of Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant proposal request appeared in the June 10, 2005, issue of the *Texas Register* (30 TexReg 3472). The selected consultant will perform technical and professional work to

conduct a Low-Cost Signal Improvement Program/Thoroughfare Assessment Program Phase 3.2.

The consultant selected for this project is TEAL Engineering Services Inc., 4874 East Lone Oak Road, Valley View, Texas 76272. The maximum amount of this contract is $2,493,826.

TRD-200602330
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: April 26, 2006

♦ ♦ ♦

Notice of Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant proposal request appeared in the August 26, 2005, issue of the *Texas Register* (30 TexReg 5093). The selected licensed insurance carrier will perform technical and professional work to implement a Pay-As-You-Drive Insurance Pilot Program.

The licensed insurance carrier selected for this project is Progressive Casualty Insurance Company, 6300 Wilson Mills Road, Mayfield Village, Ohio 44143. The maximum amount of this contract is $1,267,436.

TRD-200602331
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: April 26, 2006

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Texas Board of Professional Engineers

Record Drawing Stakeholder Meeting Notice

The Texas Board of Professional Engineers (Board) is given authority to issue advisory opinions under Subchapter M, Chapter 1001 of the Occupations Code (Texas Engineering Practice Act). The Board is required to issue an advisory opinion about interpretations of the Texas Engineering Practice Act in regard to a specific existing or hypothetical factual situation if requested by a person and to respond to that request within 180 days.

Pursuant to that requirement, the Board hereby notifies potential stakeholders that it has initiated the process to develop an advisory opinion regarding record drawings. One scenario involves the construction of a subdivision by a developer. The roads and utilities may be installed prior to being annexed by or under the jurisdiction of the local municipality and so they may not be considered public works during construction. However, city officials will require an engineer to seal the plans, upon annexation. The Board does not consider documentation of what was actually constructed to be engineering. If an engineer did not supervise the engineering construction, he will only be able to attest to the accuracy of the drawings with a notation as to what he can actually confirm or observe. Therefore, an engineer may include a caveat on the drawing with a notation as to what he can actually confirm based on the information he can obtain through observation, interviews, samples, and other useful information. Due to the nature of the request, we expect to have input from those agencies or companies that work on subdivisions and others that may have interest in this topic. The Board has developed a stakeholder process to gather information from professional engineers, and consultants and other interested parties. The policy advisory will be written with consideration given to stakeholder comments. This notice is intended to generate a list of possible stakeholders and to initiate public comment. The Board plans to schedule a stakeholder meeting at 10 a.m. on May 23, 2006. Stakeholder contact information and comments received during the posting period will be considered in the policy advisory and the scheduling of the stakeholder meeting. Comments and stakeholder information should be directed to:

Texas Board of Professional Engineers

1917 IH 35 South

Austin, Texas 78741

Attention: Policy Advisory Staff

Or by e-mail to: peboard@tbpe.state.tx.us

TRD-200602314
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Filed: April 26, 2006

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Public Utility Commission of Texas

Announcement of Application for Amendment to State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on April 21, 2006, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Time Warner Entertainment-Advance/Newhouse Partnership, doing business as Time Warner Cable, to Amend its State-Issued Certificate of Franchise Authority, Project Number 32637 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 32637.

TRD-200602302
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 24, 2006

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Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on April 21, 2006, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Time Warner Entertainment-Advance/Newhouse Partnership, doing business as Time Warner Cable, to Amend its State-Issued Certificate of Franchise Authority, Project Number 32638 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin,

Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 32638.

TRD-200602303
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 24, 2006

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Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on April 21, 2006, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Time Warner Entertainment-Advance/Newhouse Partnership (Southwest Division) for a State-Issued Certificate of Franchise Authority, Project Number 32636 before the Public Utility Commission of Texas.

Applicant intends to provide cable service. The requested CFA service area includes the City of Holliday, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 32636.

TRD-200602301
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 24, 2006

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Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of a joint application for sale, transfer, or merger filed with the Public Utility Commission of Texas (commission) on April 21, 2006, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated, §14.101 and §39.158 (Vernon 1998 & Supp. 2005) (PURA).

Docket Style and Number: Joint Application of Topaz Power Group GP, LLC; Topaz Power Group LP, LLC; Coleto Creek Power, LP; and American National Power, Inc. Pursuant to PURA §39.158, Docket Number 32640.

The Application: Topaz Power Group GP, LLC; Topaz Power Group LP, LLC; Coleto Creek Power, LP; and American National Power, Inc. (collectively, Applicants) filed a joint application for approval of Topaz Power Group GP, LLC's and Topaz Power Group LP, LLC's proposed sale of Coleto Creek Power, LP to ANP ERCOT Acquisition, LLC, a wholly-owned subsidiary of ANP. Topaz Power Group GP, LLC and Topaz Power Group LP, LLC have agreed to sell their 0.1% and 99.9% respective ownership interests in Coleto Creek Power, LP to ANP ERCOT Acquisition, LLC. The entity resulting after the sale of Coleto Creek Power, LP to ANP ERCOT Acquisition, LLC will own and control 3,057.2 MW of installed generation capacity in the Electric Reliability Council of Texas (ERCOT), which represents less than 4% of the total installed generation capacity located in or capable of delivering electricity to ERCOT.

Applicants are required to obtain commission approval before closing if the electricity to be offered for sale in ERCOT will exceed 1% of the total electricity for sale in ERCOT. The commission shall approve the transaction unless the commission finds that the transaction results in a violation of PURA, §39.154. Under §39.154, a power generation company may not own and control more than 20% of the installed generation capacity located in, or capable of delivering electricity to ERCOT. Applicants have stated that, since the combined company will own or control 3,057.2 MW of installed generation capacity within ERCOT, this will not exceed the 20% limitation.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P. O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 32640.

TRD-200602300
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 24, 2006

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 14, 2006, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of HomFone Services, LLC for a Service Provider Certificate of Operating Authority, Docket Number 32620 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service and long distance services.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than May 10, 2006. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32620.

TRD-200602260
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 21, 2006

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Notice of Application to Amend Certificated Service Area Boundaries in Victoria County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on April 17, 2006, for an amendment to certificated service area boundaries within Victoria County, Texas.

Docket Style and Number: Joint Application of Victoria Electric Cooperative, Inc. (VEC) and AEP Texas Central Company (TCC) for a Certificate of Convenience and Necessity for Service Area Boundaries within Victoria County. Docket Number 32622.

The Application: This boundary change is inside the incorporated city limits of the City of Victoria and is requested to enable TCC to provide service to the City of Victoria in the remainder of Ethel Lee Tracy Park. The City of Victoria desires to expand electric service within the park. VEC is in full agreement with the territory amendment. Both applicants provide electric service in the Victoria area; however, TCC's facilities are in the best position to economically provide the additional service.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than May 12, 2006 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 32622.

TRD-200602261
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 21, 2006

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Public Notice of Proceeding to Review Employee Compensation Levels of the Electric Reliability Council of Texas

On March 8, 2006, the Public Utility Commission of Texas (commission) considered an application filed by the Electric Reliability Council of Texas (ERCOT) in Docket No. 31824, *Petition of the Electric Reliability Council of Texas for Approval of the 2006 ERCOT Administrative Fee*. During its deliberations in that proceeding, the commission reviewed the level of compensation (including salaries, raises, bonuses, and benefits) paid to ERCOT's officers and employees. The commission expressed concern that the information that it received during the hearing on ERCOT's petition did not address some important issues concerning the level of compensation paid by ERCOT. As a result, the commission directed that a project be initiated to provide additional information on these issues.

Section 39.151 of the Public Utility Regulatory Act (PURA), Texas Utilities Code, §§11.001 - 66.017, requires the commission to ensure that an "independent organization," like ERCOT, "adequately performs the organization's functions and duties." PURA also requires the commission to investigate ERCOT's salaries and benefits and allows the commission to establish a reasonable and competitively neutral rate to cover ERCOT's costs of performing its functions and duties. To perform its statutory duty to oversee and review ERCOT's operations, the commission is authorized to require ERCOT to provide reports and information concerning the organization's revenues, expenses, and other financial matters; and ERCOT is required to fully cooperate with the commission. The commission has determined that an inquiry into the compensation paid by ERCOT is necessary in order to assure that ERCOT can attract and retain the qualified staff that it needs to perform its statutory duties while maintaining the administrative fee at a reasonable level, as required by PURA. The commission intends to review the level of compensation as well as the methods used by ERCOT to review and implement changes in compensation.

Pursuant to the commission's direction, the commission staff has initiated Project No. 32494, *PUC Proceeding to Review Employee Compensation Levels of the Electric Reliability Council of Texas*. As a part of Project No. 32494, the staff of the commission is requesting that ERCOT provide the information described below.

1. ERCOT is requested to provide an explanation of how it determines the appropriate level of base salary for a job category, including the following: (a) whether the salary level for a job category is fixed; (b) whether the salary level is related to the median level of similar jobs; (c) the range of salary level for a job category stated in terms of maximum and minimum or percentage from the midpoint; and (d) the standards and criteria ERCOT uses to determine the starting salary for a particular employee within that range.

2. ERCOT is requested to provide an explanation of how it determines the appropriate level of bonus for an officer or employee, including the following: (a) which officers and employees are eligible for bonuses; (b) the level of bonus potentially available to each employee classification; (c) the standards and criteria that ERCOT uses to determine the total amount of bonus money to be included in its fee request; and (d) the standards and criteria ERCOT uses to determine whether a particular officer or employee will receive a bonus and the amount of such bonus.

3. ERCOT is requested to provide an explanation of how it determines whether an overall pay increase is justified for officers and employees (not including pay increases due to promotions), including the following: (a) how frequently overall pay increases are considered; (b) whether the pay increase is related to the change in the cost of living or other index; and (c) the standards and criteria ERCOT uses to determine whether an overall pay increase is necessary.

4. ERCOT is requested to provide an explanation of how it determines the appropriate level of benefits provided to officers and employees, including the following: (a) whether the same benefits are provided to all officers and employees; (b) whether the level of benefits is related to the type and value of benefits provided by other public or private entities; and (c) the standards and criteria ERCOT uses to determine whether benefits should be added, revised, or eliminated from its compensation structure.

5. ERCOT is requested to provide an explanation of how each element of its compensation structure is critical to the execution of one of the statutory functions listed in PURA §39.151.

6. During the hearing in Docket No. 31824, ERCOT indicated that it would develop a plan to implement certain recommendations contained in a study prepared by Mercer Human Resource Consulting (the Mercer Study). ERCOT is requested to provide a detailed report identifying: (a) which recommendations from the Mercer Study it intends to implement; (b) which recommendations it is not implementing and the reasons why those recommendations are not being implemented; (c) the steps that it will take to implement each recommendation; (d) the timeline for implementing each recommendation; (e) how implementation would affect any of the standards and criteria detailed in response to the previous requests; and (f) any approvals that may be required from the commission to implement any recommendation.

Additionally, the commission requests comments on the following questions:

7. To what group, or groups, should ERCOT officers and employees be compared as a basis for determining whether ERCOT's compensation levels are reasonable? Should different groups be used to determine

the reasonableness of different types of compensation (*e.g.*, salaries vs. benefits)?

8. Should the commission limit ERCOT's ability to change its compensation levels or require explicit commission approval before such changes can be implemented?

9. What is the appropriate level of allowable relocation expenses in view of the total compensation package offered by ERCOT and the peer groups to which ERCOT is being compared?

10. What is the appropriate level of allowable tuition and registration fees relative to the job duties and the experience level of the various ERCOT employees?

11. Are there employee-related expenses that are handled as "outside-the-budget" decisions, and is it appropriate to allow such "outside-the-budget" expenses?

12. May ERCOT expend funds on budget items that have otherwise been specifically disallowed by the commission?

13. Should the commission adopt rules prohibiting certain types of benefits (*e.g.*, corporate events)?

14. What amendments, if any, are needed to P.U.C. Substantive Rule §25.362 or Procedural Rule §22.252 to address the reasonableness of ERCOT compensation levels?

15. What proceedings, if any, should the commission undertake in order to address ERCOT's current or future compensation levels?

The commission has requested that ERCOT file the requested information in this project by Wednesday, May 10, 2006. The commission also invites comments on ERCOT's filing and responses to Questions 7 - 11 from other interested persons. Such comments should be filed in this project by Friday, May 26, 2006. Written comments concerning this project may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. All responses should reference Project Number 32494.

The commission will conduct a workshop on this project at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Thursday, June 8, 2006, at 10:00 a.m. Interested persons are invited to attend the workshop to provide additional comments or respond to the questions from the commission.

Questions concerning the workshop or this notice should be referred to Patrick J. Sullivan, Staff Attorney, Legal Division, (512) 936-7125. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200602299
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 24, 2006

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Texas Department of Transportation

Public Notice of DEIS

Pursuant to Title 43, Texas Administrative Code, §2.43(c)(9)(A)(i), the Texas Department of Transportation (TxDOT) is advising the public of the availability of the approved Tier One Draft Environmental Impact Statement (DEIS) for the proposed Trans-Texas Corridor 35 (TTC-35) (the Oklahoma to Mexico/Gulf Coast Element) project. The proposed project is being developed jointly with the Federal Highway Administration. The DEIS is available for public review at TxDOT district and area offices, public libraries in the project study area, and online at **www.keeptexasmoving.org**. Visit the website for a complete listing of locations to view the DEIS. Copies (paper or CD) can be obtained for the actual cost of reproduction. To order a copy call toll-free at (877) 872-6789, or send an e-mail to **corridor@dot.state.tx.us**.

The proposed TTC-35 project is needed to accommodate projected population growth and subsequent traffic demand; facilitate congestion management; accommodate increasing freight volumes; provide transportation modal options; improve safety; and sustain economic vitality. The purpose of TTC-35 is to improve the international, interstate, and intrastate movement of goods and people; address the anticipated transportation needs of Texas from the Texas-Oklahoma state line to the Texas-Mexico border along the Interstate 35 corridor for the next 20 to 50 years; and, sustain and enhance the economic vitality of the State of Texas.

The TTC-35 (the Oklahoma to Mexico/Gulf Coast element) is one of four high-priority TTC elements identified in the *"Crossroads of the Americas: Trans Texas Corridor Plan"*. The length of TTC-35 would be dependent on the results of the Tier One decision and subsequent Tier Two environmental processes. As proposed, TTC-35 would be a multi-modal transportation corridor extending from the Texas-Oklahoma state line, north of the Dallas-Fort Worth (DFW) metropolitan area, through Central Texas, to the Texas-Mexico border and/or the Texas Gulf Coast. It is anticipated that the proposed TTC-35 project would generally parallel existing I-35 for much of its length, and possibly portions of I-37, and/or proposed I-69.

Plans call for TTC-35 to be completed in phases over the next 50 years with alignments prioritized according to Texas' transportation needs. TxDOT will oversee planning, environmental compliance, construction, and ongoing maintenance, although private vendors may be responsible for much of the daily operations.

The purpose of the TTC-35 Tier One DEIS is to compare corridor alternatives and a No Action Alternative and to identify a preferred alternative. The Preferred Alternative selected in the Tier One Record of Decision (ROD) would either be the No Action Alternative, or a corridor in which proposed TTC-35 facilities would be evaluated in subsequent Tier Two environmental processes. If the Tier One decision results in the selection of a corridor alternative as a Preferred Alternative, no construction-related activities will be authorized as a result of the Tier One decision. If the Tier One decision results in the selection of a corridor alternative as the Preferred Alternative, the selected corridor would become the study area for subsequent Tier Two alignment level studies. Construction would not be authorized until completion of Tier Two environmental processes.

The preliminary alternatives evaluated in the DEIS include the Transportation System Management Alternative, the Travel Demand Management Alternative, Upgrading of an Existing Facility Alternative, the No Action Alternative, and 180 Preliminary Corridor Alternatives. Based on an analysis of the preliminary alternatives, 13 alternatives (A No Action Alternative and 12 Reasonable Corridor Alternatives [RCAs]) were selected to be evaluated in detail in the TTC-35 Tier One DEIS. Under the No Action Alternative, a corridor for TTC-35 would not be selected. Each of the 12 RCAs begins north of the DFW metropolitan area at either of two end-points at the Texas-Oklahoma border, Gainesville or Sherman/Denison. As the RCAs extend south, one option is located to the west of the DFW area, while two additional overlapping options are located to the east of the DFW area. In the central part of Texas, all 12 RCAs overlap between just north of Temple and to just north of San Antonio to form one option. East of San Antonio, the RCAs split into two options; one option extends along the existing I-35 corridor, while another option would be on new location

to a single end-point at Laredo. The length of each RCA varies between 486 to 521 miles, each generally paralleling the existing I-35 from the Texas-Oklahoma border to the Texas-Mexico border at Laredo, Texas.

The TTC-35 Tier One DEIS evaluates each alternative on its ability to meet the TTC-35 need and purpose and its potential to affect the environment. Based on the analysis presented in the TTC-35 Tier One DEIS, RCA 5 has been identified as the Preferred Alternative.

RCA 5 was identified as the Preferred Alternative because it performed better (40 percent better on tolled scenario and 44 percent better on a non-tolled scenario) overall at meeting the transportation needs when compared to 10 of the 11 other RCAs and the No Action Alternative. In addition, it contains more miles of existing highway (195 miles) and rail line (214 miles) than other alternatives and thus, more potential for reducing project costs and environmental effects.

Comments regarding the TTC-35 Tier One DEIS should be submitted to the Texas Department of Transportation, Mr. Ed Pensock, P. O. Box 14707, Austin, Texas 78761-4707 or via e-mail at **www.keeptexasmoving.com** prior to 5:00 p.m. on Monday, August 21, 2006.

Obtener informacion en espanol. Llamada gratis: (877) 872-6789.

TRD-200602344
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: April 26, 2006

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Request for Qualifications

Pursuant to the authority granted under Texas Transportation Code, Chapter 223, (enabling legislation), the Texas Department of Transportation (TxDOT) may enter into comprehensive development agreements for the design, development, construction, financing, maintenance, or operation of a toll project on the state highway system. The enabling legislation authorizes private involvement in toll projects and provides a process for TxDOT to solicit proposals for such projects. Transportation Code, §223.203, prescribes requirements for an unsolicited proposal and, if a decision is made to further evaluate the unsolicited proposal, requires TxDOT to publish a request for competing proposals and qualifications in the *Texas Register* that includes the criteria that will be used to evaluate the original proposal and any competing proposals, the relative weight given to the criteria, and a deadline by which the proposals must be received. The Texas Transportation Commission (commission) has promulgated rules located at Title 43, Texas Administrative Code, §§27.1 - 27.6 (the rules), governing the submission and processing of unsolicited proposals and any competing proposals, and providing for publication of notice that TxDOT is requesting competing proposals and qualifications submittals for development of a toll project with private involvement. The commission has authorized the issuance of a request for competing proposals and qualifications to develop, design, construct, finance, operate, and maintain tolled main lanes and associated facilities along an extension of SH 161 from SH 183, south to I-20 through the cities of Irving and Grand Prairie, as well as other potential facilities to the extent necessary for connectivity and financing (project), through a Comprehensive Development Agreement (CDA).

On September 29, 2005 in Minute Order 110234, the commission authorized TxDOT to commence the unsolicited proposal procurement process for the project under the enabling legislation. This notice represents the next step in the process.

Through this notice, TxDOT is seeking competing proposals and qualifications submittals (PQS) in response to a request for qualifications (RFQ). TxDOT intends to evaluate any PQS received and may request submission of a detailed proposal, potentially leading to negotiation, award, and execution of a CDA. TxDOT will accept for consideration any PQS received in accordance with the rules within 90 days of the publication of this notice. TxDOT anticipates issuing the RFQ, receiving and analyzing the PQSs, developing a shortlist of proposing entities or consortia, and issuing a request for detailed proposals (RFP) to the shortlisted entities. After review and a best value evaluation of the responses to the RFP, TxDOT may negotiate and enter into a CDA for the project.

RFQ Evaluation Criteria. PQSs will be evaluated by TxDOT for shortlisting purposes using the following general criteria: relative strength and depth of entity qualifications, personnel qualifications, financial qualifications and legal qualifications; relative strength, feasibility and desirability of the proposed conceptual project development plan; and relative strength, feasibility and desirability of the proposed conceptual project financing plan. The specific criteria under the foregoing categories will be identified in the RFQ, as will the relative weighting of the criteria.

Release of RFQ and Due Date. TxDOT currently anticipates that the RFQ will be available on May 5, 2006. The RFQ will include a conceptual project concept. Copies of the RFQ will be available at TxDOT's Headquarter office located at 125 E. 11th Street, 5th Floor, Austin, Texas 78701, or on the following website: **http://www.dot.state.tx.us**. PQSs will be due on August 3, 2006 at the address specified in the RFQ.

TRD-200602343
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: April 26, 2006

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University of Houston System

Consultant Contract Award Notice

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, The University of Houston System furnishes this notice of consultant contract award. The consultant will perform a compensation market study. Requests for proposals were filed in the December 9, 2005 issue of the *Texas Register* (30 TexReg 8355).

The contract was awarded to Deloitte Consulting LLP, 333 Clay Street, Suite 2300, Houston, Texas 77002-4196, for a total not to exceed amount of $100,000.

The beginning date of the contract is April 10, 2006; and the ending date is June 30, 2006.

For further information, please call (713) 203-6179.

TRD-200602254
Brian S. Nelson
Executive Director and Associate General Counsel
University of Houston System
Filed: April 20, 2006

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).